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No. 145

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TRANSCRIPT OF RECORD

In the

United States Court of Appeals

For the Seventh Circuit

No. 11777

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

ALLEN M. WAINER,
Defendant-Appellant.

U. S. C. A. - 7
FILED
SEP 10 1956
KENNETH J. CARRICK

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

The Schaffer Press, Inc.—ANdover 3-6850

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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1 PLEAS had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of January (it being the 2nd day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty-Six and of the Independence of the United States of America, the 180th Year.

Present:
Honorable John P. Barnes, Chief District Judge
Honorable William H. Holly, District Judge
Honorable Philip L. Sullivan, District Judge
Honorable Michael L. Igoe, District Judge
Honorable William J. Campbell, District Judge
Honorable Walter J. La Buy, District Judge
Honorable J. Sam Perry, District Judge
Honorable Win G. Knoch, District Judge
Honorable Julius J. Hoffman, District Judge

Roy H. Johnson, Clerk
William W. Kipp, Sr., Marshal

Monday, January 16, 1956
Court met pursuant to adjournment
Present: Honorable J. Sam Perry, Trial Judge

2 Statement Pursuant to Rule 10(b), U.S.C.A.

2 In The United States District Court
For The Northern District Of Illinois
Eastern Division

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) No. 48 C 1926
ALLEN M. WAINER,)
Defendant.)

STATEMENT PURSUANT TO RULE 10B OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

This suit was filed December 28, 1948, by the United States of America against Allen Wainer.

The Complaint was amended prior to service of the Complaint by the filing of a First Amendment to the Complaint.

The Answer to the Complaint was duly filed by the defendant and thereafter the plaintiff filed its Second Amendment to the Complaint on April 27, 1949.

The Answer on file to the Complaint, by order of the Court stood as the Answer to the Complaint as amended by the Second Amendment.

The defendant was not arrested nor was bail taken, and no property was attached or seized.

The case was originally tried on April 1, 1952, before Judge Joseph Sam Perry of the District Court, without a jury on the Complaint as Amended and the Answer.

3 Judgment for the plaintiff, in part, was appealed from and was reversed by the Court of Appeals for the Seventh Circuit, which issued its mandate, filed April 30, 1954, in the District Court.

Thereafter on September 16, 1955, the defendant amended his Answer and on September 28 the plaintiff filed a Reply to the First Amendment to the Answer with attached exhibits.

The cause was re-tried on October 13th and 14th, 1955, and the Court, after disposing of objections to proposed findings of fact and conclusions of law, entered judgment and findings of fact and conclusions of law on January 16, 1956.

This appeal was commenced by the filing of a Notice of Appeal in the Office of the Clerk of the District Court on March 14, 1956, and the time within which the record on appeal should be filed was enlarged by order of the District Court to and including June 11, 1956.

Maurice J. Walsh
Attorney for Defendant

4 In The United States District Court

* * (Caption--No. 48 C 1926) * *

Be It Remembered, that on to wit, the 28th day of December, 1948, the above-entitled action was commenced by the filing of the Complaint, in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to wit:

5 In The United States District Court
For The Northern District Of Illinois
Eastern Division

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	No. 48 C 1926
ALLEN M. WAINER, Defendant.	)	

COMPLAINT

The United States of America, appearing by its attorney, Otto Kerner, Jr., United States Attorney in and for the Northern Judicial District of Illinois, for cause of action against the above-named defendant, complains and alleges:

I

That at all times herein mentioned plaintiff was, and is, a corporation sovereign and body politic.

II

That this suit is authorized and sanctioned by the Deputy Commissioner, Alcohol Tax Unit, Bureau of Internal Revenue, pursuant to Treasury Decision 5449,

and filed under the direction of the Attorney General of the United States.

III

That this suit is instituted by the United States of America under Section 24, paragraphs 1 and 5, of the Judicial Code, as amended, and relates to taxes arising under internal revenue laws of the United States.

IV

That the defendant, Allen M. Wainer, lives and resides at 918 Winona Avenue, Chicago, Illinois, and within the jurisdiction of this Court.

6

V

That on or about the sixth day of September, 1935, the defendant, Allen M. Wainer, held and possessed a proprietary interest in an illicit, unbonded distillery set up and operated near the town of Carson, Portage County, Wisconsin; that officers of the United States on said date seized at said distillery 95,479 gallons of distilled mash, 4,000 gallons of alcohol of regular proof, and 2,500 gallons of distilled spirits of lesser proof, produced thereat, on all of which no taxes had been paid.

VI

That the Commissioner of Internal Revenue assessed taxes on the distilled spirits and alcohol seized as set forth in paragraph V against Allen M. Wainer and others on the November, 1935, Distilled Spirits List for the District of Wisconsin, as follows:

7,320 p.g. alcohol at $2.00	$14,640.00
11,897.37 p.g. alcohol mash at $2.00 . . .	23,794.74
962.5 p.g. Mis. distilled spirits at $2.00	1,925.00
Total	$40,359.74

VII

That the assessment referred to in paragraph VI hereof was received by the Collector of Internal Revenue on or about the 30th day of December, 1935; that on or about the 2nd day of January, 1936, notice of said assessment and demand for payment of said distilled spirits taxes was mailed to defendant Allen M. Wainer; that thereafter the sum of $9,512.13 was collected on the said assessment of $40,359.74 by the

Collector of Internal Revenue for the District of Wisconsin, leaving due and owing the remaining sum of $30,847.61.

7 VIII

That thereafter the remaining assessment of $30,847.61, referred to in paragraph VII hereof was transferred from the Collection District of Wisconsin and entered on the August, 1938, Distilled Spirits List for the First Collection District of Illinois; that the said tranferred assessment was received by the Collector for the First Collection District of Illinois on or about the 22nd day of September, 1938; that on or about the 24th day of September, 1938, notice and demand for payment of the said remaining taxes was mailed to the defendant Allen M. Wainer; that thereafter the sum of $250 was collected on the said remaining assessment of $30,847.61 by the Collector, leaving due and owing the remaining sum of $30,597.61; that the defendant Allen M. Wainer has not paid the said remaining taxes, nor any one else, and the whole amount thereof, $30,597.61 together with penalty and interest, as provided by law, remains due and unpaid.

IX

That on or about the 26th day of September, 1935, the defendant Allen M. Wainer, held and possessed a proprietary interest in an illicit, unbonded distillery set up and operated at a point near Joliet, Illinois; that officers of the United States on said date seized at said distillery, 69,400 gallons of distilled mash and 5,060 gallons of alcohol of different degrees of proof, produced thereat, on which no taxes had been paid.

X

That the Commissioner of Internal Revenue assessed taxes on the distilled spirits and alcohol seized as set forth in paragraph IX, against Allen M. Wainer
8 and others on the July, 1938, Distilled Spirits List for the First Collection District of Illinois, as follows:

7,542.36 p.g. alcohol at $2.00	$15,084.72
7,413.24 p.g. alcohol in mash at $2.00 . .	14,826.48
1,000.00 w.g. Mis. Distilled spirits at $2.00	2,000.00
Total	$31,911.20

XI

That the assessment referred to in paragraph X hereof was received by the Collector of Internal Revenue on or about the 25th day of August, 1938; that on or about the 27th day of August, 1938, notice of said assessment and demand for payment of the said distilled spirits taxes was mailed to the defendant Allen M. Wainer; that the said defendant Allen M. Wainer has not paid the said taxes, nor any one else, and the whole amount thereof, $31,911.20, together with penalty and interest, as provided by law, remains due and unpaid.

Wherefore, plaintiff prays that this Honorable Court order, adjudge and decree that defendant Allen M. Wainer is indebted to the plaintiff in the total amount of $62,608.81, and that judgment be entered therefor, together with penalty and interest as provided by law.

Otto Kerner, Jr.
Otto Kerner, Jr.
United States Attorney,
Attorney for Plaintiff.

9 And afterwards on, to wit, the 29th day of December, 1948 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain First Amendment To The Complaint in words and figures following, to wit:

10 In The United States District Court

* * (Caption--No. 48 C 1926) * *

FIRST AMENDMENT TO THE COMPLAINT

The United States of America, by its attorney, Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, filed herewith its first amendment to the complaint, adding to and supplementing the complaint filed herein on December 28, 1948, by adding to said complaint paragraph XII as follows:

XII

Prior hereto, by acts of the defendant, the time for the recovery of the taxes involved herein has been

extended to and including December 31, 1948.

Otto Kerner, Jr.
Otto Kerner, Jr.
United States Attorney,
Attorney for Plaintiff.

11 And afterwards on, to wit, the 1st day of April, 1949 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Answer To Complaint in words and figures following, to wit:

12 In The United States District Court

* * (Caption--No. 48 C 1926) * *

ANSWER TO COMPLAINT

Allen M. Wainer, by his attorney, Maurice J. Walsh, answers the Complaint in the above mentioned cause and says:

I

This Defendant admits allegation of Paragraph 1.

II

This Defendant is not informed concerning allegation of Paragraph 2 and requests that strict proof be required of the authority for the filing of this suit.

III

This Defendant admits the allegation of Paragraph 3.

IV

This Defendant admits allegation of Paragraph 4, to the effect that he now resides at 918 Winona Avenue, Chicago, Illinois, but states that he has not lived at that address at all times and places mentioned in the Complaint and involved in the transaction therein described.

V

This Defendant denies the allegation of Paragraph 5 of the Complaint, and states that he did not at any time before, on, or after the 6th day of September, 1935 held and possessed a proprietary interest in an illicit, unbonded distillery near the town of Carson, Portage County, Wisconsin.

This Defendant further states that he is not informed concerning any discovery or seizures by Officers
13 of the United States of illicit alcohol, mash or distilled spirits in Wisconsin at any time or place.

VI

This Defendant has no information concerning allegation of Paragraph 6 of the Complaint, and further states that any assessment against this Defendant arising out of an alleged interest in an illicit, unbonded distillery near Carson, Portage County, Wisconsin is erroneous, incorrect and invalid, since this Defendant has never manufactured or owned any alcohol, mash or distilled spirits in the State of Wisconsin.

VII

This Defendant is not informed concerning the receipt on December 30, 1935 by the Collector of Internal Revenue of the assessment mentioned or any assessment and requests that strict proof be required; this Defendant denies that notice of any assessment and demand for payment was mailed to him on January 2, 1936 and denies receipt, actual or constructive, of any such notice; this Defendant further denies that he has at any time paid any amount whatsoever upon any assessment of taxes for distilled spirits and states that he is uninformed as to the collection of $9,-512.13 on said assessment and requests that strict proof regarding said payment and the person making such payment be required by the Court.

VIII

This Defendant is uninformed regarding the transfer of any assessment from the Collection District of Wisconsin to the Distilled Spirits List for the First Collection District of Illinois or the date thereof; and denies that notice and demand for payment of said remaining taxes was mailed to Defendant, and states that he has never received, actually or constructive, any notice and demand for the payment of said taxes;

Defendant further denies that he ever paid the sum
14 of $250.00 on said assessment; Defendant admits and states as a fact that he has not paid any amount whatsoever upon said assessment for the reason that he had no interest whatsoever in the still involved in said assessment.

Defendant requests that strict proof be required concerning those allegations on which this Defendant alleges that he is uninformed.

IX

This Defendant denies that on the 26th day of September, 1935, he held and possessed a proprietary interest in an illicit, unbonded distillery set up and operated near Joliet, Illinois; That he is without knowledge of the facts concerning any seizure of mash or alcohol at said still or the payment or non-payment of taxes thereon.

X

This Defendant is uninformed concerning assessment of taxes against this Defendant in July 1938 and request that strict proof be required concerning said assessment.

This Defendant further states that any assessment against this Defendant for taxes on alcohol produced at the distillery described in Paragraph 9 of the Complaint is erroneous, incorrect and invalid, since he had no proprietary interest in the manufacture or ownership of distilled spirits at said distillery and had no proprietary interest in the said distillery.

XI

This Defendant is not informed concerning the receipt by the Collector of Internal Revenue of any assessment on or about the 25th day of August, 1938; and denies that on the 27th day of August, 1938 or at any other time notice of said assessment was mailed to Defendant and states that he has never received, either actually or constructive, notice of said assessment and demand for payment; and this Defendant further states that he has not paid any amount whatsoever on such assessment for the reason that such assessment was never properly made against him, nor was proper notice and demand made, and Defendant does not owe any taxes for alcohol, mash or distilled spirits produced at the distillery described in Paragraph 9 of the Complaint, and in the alleged assessment because he had no proprietary interest in said alcohol, mash or distilled spirits or the distillery in which it was produced.

XII

The Defendant denies that the time for the recovery

of the taxes involved herein has been extended to and including December 31, 1948, by any acts of the Defendant or by the operation of any law, regulation or statute, and states that the time for the collection of said taxes has expired.

Wherefore this Defendant prays that this Honorable Court order, adjudge and decree that the Defendant, Allen M. Wainer, is not indebted to the Plaintiff in the total amount of $62,608.81 or any sum whatsoever and that judgment be entered for the Defendant for his costs accrued in this case.

Maurice J. Walsh
Attorney for Defendant -
Allen M. Wainer

16 And afterwards, to wit, on the 27th day of April, 1949 being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit:

17 In The United States District Court

* * (Caption--No. 48 C 1926) * *

It Is Ordered by the Court that leave be and it is hereby granted to the plaintiff to file instanter its second amendment to the complaint and that the answer of the defendant now on file stand as answer of said defendant to the complaint as so amended

18 And on the same day, to wit, the 27th day of April, 1949 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Second Amendment To The Complaint in words and figures following, to wit:

19 In The United States District Court

* * (Caption--No. 48 C 1926) * *

SECOND AMENDMENT TO THE COMPLAINT

The United States of America, by its attorney, Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, by leave of court first duly had and obtained, files herewith its Second Amendment to the Complaint, as follows:

In lieu of Paragraph XI thereof, substitute the following:

XI

"That the assessment referred to in Paragraph 10 hereof was received by the Collector of Internal Revenue on or about the 25th day of August, 1938; that on or about the 27th day of August, 1938, notice of said assessment and demand for payment of the said distilled spirits taxes was mailed to defendant Allen M. Wainer; that thereafter the sum of $3,922.70 was collected by the Collector, leaving due and owing the remaining sum of $27,988.50; that the said defendant Allen M. Wainer has not paid the said remaining
taxes, nor anyone else, and the whole amount
20 thereof, $27,988.50, together with penalty and
interest, as provided by law, remains due and unpaid."

In the prayer for judgment strike out the figures $62,608.81 and substitute in lieu thereof $58,586.11.

Otto Kerner, Jr.
Otto Kerner, Jr.
United States Attorney,
Attorney for Plaintiff.

21 And afterwards on, to wit, the 30th day of April, 1954 there was filed in the Clerk's office of said Court a certain Mandate Of The United States Court of Appeals, Seventh Circuit, in words and figures following, to wit:

22 United States of America, ss:

The President of the United States of America
To the Honorable the Judges of the United States District Court for the Northern District of Illinois, Eastern Division

Greeting:

Whereas, lately in the United States District Court for the Northern District of Illinois, Eastern Division before you, or some of you, in a cause between United States of America, Plaintiff, and Allen M. Wainer, Defendant, Number 48-C-1926, a Judgment was entered on the fifth day of December, 1952.

23 as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the Seventh Circuit by virtue of an appeal by Allen M. Wainer agreeably to the act of Congress, in such case made and provided; fully and at large appears.

24 And Whereas, in the term of October, in the year of our Lord one thousand nine hundred and fifty-three, the said cause came on to be heard before the said United States Court of Appeals for the Seventh Circuit, on the said transcript of record, and was argued by counsel.

On Consideration Whereof, It is ordered and adjudged by this Court that the Judgment of the said District Court in this cause appealed from be, and the same is hereby, Reversed; and that this cause be, and it is hereby, Remanded to the said District Court with instructions to permit the Defendant to amend his answer by pleading the release and for such further proceedings as may be appropriate but not inconsistent with the views expressed in the Opinion of this Court filed this day.

Wednesday, March 31, 1954.

25 You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said Judgment notwithstanding.

Witness, the Honorable Earl Warren, Chief Justice of the United States, the 29th, day of April, in the year

of our Lord one thousand nine hundred and fifty-four.

Kenneth J. Garrick
Clerk of the United States
Court of Appeals in the
Seventh Circuit
BY: R. Hays Blanchard
Chief Deputy Clerk.

26 And afterwards, to wit, on the 24th day of August, 1955 being one of the days of the regular August term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entry, to wit:

27 In The United States District Court

* * (Caption--No. 48 C 1926) * *

On the Court's own motion it is

Ordered that the defendant shall file an amendment to answer within ten days, said amendment limited solely to the issue of compromise and release and that the Government shall produce to the defendant within five days a copy of said release and it is

Further Ordered that this cause be and the same hereby is set for October 3, 1955 at 10:00 A. M. for re-opening of evidence and hearing, being the No. 2 case for that date

28 And afterwards on, to wit, the 16th day of September, 1955 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain First Amendment To Answer in words and figures following, to wit:

29 In The United States District Court

* * (Caption--No. 48 C 1926) * *

FIRST AMENDMENT TO ANSWER

Allen M. Wainer, defendant, by his attorney, Maurice J. Walsh, files herewith his First Amendment to his

Answer, adding to and supplementing the Answer filed herein, by adding to said Answer as follows:

XIII

The tax herein mentioned and for which judgment is sought arises under the provisions of Section 2800(d), Title 26, U. S. C., which insofar as pertinent reads as follows:

"Persons Liable. Every proprietor or possessor of, and every person in any manner interested in the use of, any, still, distillery or distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom."

Thus, said tax is a joint liability of those against whom it is properly assessed.

The defendant alleges that the tax here involved and mentioned in Paragraphs IX, X and XI of the Complaint and described as arising from operation of a still near Joliet, Illinois, was assessed by the Commissioner of Internal Revenue against Harry Braverman and the defendant, Allen M. Wainer, jointly.

The proof offered by the plaintiff in trial of this cause on April 1 and 2, 1952, shows that the co-obligor, Harry Braverman, was released from liability on said joint assessment, in pursuance to his offer in compromise for the sum of $5,000.00 which was accepted by the plaintiff.

The plaintiff thereby compromised said liability in full, and the release of Braverman is under law the release of both joint obligors under the alleged assessment.

The defendant alleges and states that the asserted claim of the plaintiff, if valid, has been compromised and released in full as to the defendant, by reason of the release of his alleged co-obligor on the assessment.

XIV

The defendant denies that by his acts the time for recovery of the taxes involved herein was extended to and including December 31, 1948, and states that this suit is barred by law because it was not brought within the time fixed by Statute.

Maurice J. Walsh
Attorney for Defendant,
Allen M. Wainer

31 Received a copy of the foregoing Pleading this 16th day of September, 1955.

R. Tieken
U. S. Attorney
BY: E. Tillotson

32 And afterwards on, to wit, the 28th day of September, 1955 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Reply To Defendant's Amendment To Answer in words and figures following, to wit:

33 In The United States District Court

* * (Caption--No. 48 C 1926) * *

REPLY TO DEFENDANT'S FIRST AMENDMENT TO ANSWER

The United States of America, plaintiff, by Robert Tieken, United States Attorney for the Northern District of Illinois, for reply to defendant's First Amendment to Answer, alleges:

I

Plaintiff denies each and every allegation in Paragraph XIII, except as hereinafter admitted, denied or otherwise qualified.

Admits that the tax for which judgment is sought arose under the provisions of Section 2800, Title 26, United States Code.

Denies that the tax is a joint liability, and alleges that the persons against whom the tax has been properly assessed are jointly and severally liable.

Denies that the tax involved in this litigation was assessed against Harry Braverman and the defendant Allen M. Wainer jointly, and alleges that the Commissioner of Internal Revenue assessed the tax against Harry Braverman and Allen M. Wainer, jointly and severally under the statute.

34 Admits that the proof in the trial shows release of Harry Braverman only from the joint and several assessments by reason of his offer in compromise.

Denies that the plaintiff either in fact or law compromised the tax liability in full, and denies that the release of Braverman from the assessment released the defendant.

II

Plaintiff denies the allegations in Paragraph XIV, and alleges that under the opinion and mandate of the Court of Appeals and the findings, order and judgment of this Court the issue pertaining to the waiver of the statute of limitations has been adjudicated and laid to rest and cannot now be opened for a new trial.

III

The plaintiff affirmatively alleges the facts pertaining to the offer in compromise submitted by Harry Braverman to be:

A. On or about February 3, 1941, Harry Braverman submitted to the Collector of Internal Revenue, Chicago, Illinois, an offer in compromise on Form 656(c), a true and correct copy of which is attached to the original of this Reply, marked Exhibit A(1), and made a part hereof. A copy of Exhibit A(1) has heretofore been furnished to defendant's counsel. A financial statement executed by Harry Braverman dated February 3, 1941, was submitted with the said offer. A true and correct copy of the financial statement is hereto attached, marked Exhibit A(2), and made a part hereof.

35. B. At the time of the submission of the offer in compromise to the Collector of Internal Revenue on February 3, 1941, upon request and pursuant to Com-Mimeograph, Coll. No. 4749, A. T. No. 158, Harry Braverman executed a separate statement in connection with the said offer. A true and correct copy of the statement is attached to the original of this Reply, marked Exhibit A(3), and made a part hereof. A copy of the said mimeograph is hereto attached, marked Exhibit A(4), and made a part of the original of this Reply. Copies of Exhibits A(3) and A(4) have heretofore been furnished to defendant's counsel.

C. The action taken on the offer in compromise by the Internal Revenue Service is recorded in an abstract and statement and related papers, true and correct copies of which are attached to the original of this Reply, marked Exhibit A(5), and made a part hereof.

Copies of Exhibit A(5) have heretofore been furnished defendant's counsel.

D. On September 22, 1941, the District Supervisor, Chicago, Illinois, and the Collector of Internal Revenue were notified of the acceptance of the offer. Copies of said letters of notification are hereto attached, marked Exhibit A(6), and made a part hereof. Under date of December 15, 1951, Schedule of Accepted Offers in Compromise was sent to the Collector of Internal Revenue in Chicago, Illinois. A true and correct copy of the schedule is hereto attached, marked Exhibit A(7) and made a part hereof.

36 E. On December 22, 1941, a letter of acceptance of the offer was sent to Harry Braverman, a true and correct copy of which is attached to the original of this reply, marked Exhibit A(8), and made a part hereof. A copy of Exhibit A(8) has heretofore been furnished to defendant's counsel.

Wherefore, plaintiff prays that judgment be entered for the plaintiff against the defendant as prayed for in the original complaint, together with interest and costs.

R. Tieken
United States Attorney.

Received a copy of the above and foregoing Reply to Defendant's First Amendment to Answer this 28th day of September, 1955.

Maurice Walsh (K. L. Hickey)
Maurice Walsh,
Attorney for Defendant.

(Exhibits A(1) through and including A(8) attached but not copied being Gov.'s Exhibits 26 through and including 33, admitted in evidence and certified as such)

37 And afterwards on, to wit, the 8th day of June, 1956 there was filed in the Clerk's office of said Court a certain Transcript of Proceedings Had Before Honorable J. Sam Perry, District Judge, on October 13 and 14, 1955; and Government's Exhibits 26 through and including 34, in words and figures following, to wit:

38 * * *

39 In The United States District Court

* * (Caption--No. 48 C 1926) * *

Transcript of testimony and decision had upon the trial of the above-entitled case before Hon. J. Sam Perry, one of the judges of said court, in his courtroom in the United States Court House, Chicago, Illinois, on October 13 and 14, 1955.

Present:

Mr. Benjamin H. Pester,
Special Assistant to the Attorney General,
and
Mr. Donald S. Lowitz,
Assistant United States Attorney,
appeared on behalf of plaintiff;
Mr. Maurice J. Walsh,
appeared on behalf of defendant.

40 By The Clerk: 48 C 1926, United States vs. Wainer.

The Court: How shall we proceed?

There is no release that has ever been offered in form, I do not have it in front of me, isn't that true?

Mr. Walsh: That is true, with this difference, that the witness Mines -- maybe it would be better if I made a little statement.

The Court: All right, you had better.

Mr. Walsh: I think I had better review the evidence so that we might have it in mind. If I misquote the evidence I will rely on Mr. Pester to refresh us both.

As I recall it, this lawsuit started in 1948 and was based on transactions in 1938 or prior thereto.

The complaint was that the defendant was the proprietor or possessor of a distillery which was not licensed and was an unlawful operation. He was assessed for one in Wisconsin, and on that the Government offered no proof, your Honor, and you found for the defendant on that point.

The Court: I found for the defendant on that point, that is right.

41 Mr. Walsh: On the other, a still in Joliet was involved, and the Government offered some proof and your Honor found against the defendant on the

issue of proprietorship and ownership of that situation, and that was reviewed by the Court of Appeals on our appeal. The Court of Appeals found your Honor was right and decided the issues as far as the evidence is concerned on the proprietorship and ownership of the still.

This matter did arise during the course of the testimony. During the testimony of Helen M. Mines, who was a witness for the Government, she produced certain documents which were records of the then Collector of Internal Revenue and she testified concerning entries on those documents, as to what they indicated to her as a person of experience.

Among other things, she testified they indicated to her that an offer in compromise had been made by a co-assessee, Harry Braverman, and that that offer in compromise had been accepted and that the assessment had been abated to that extent. She further testified that the entire assessment had been abated as an uncollectible item at a certain point.

42 In any event, here is the situation as we approach it now. The Court of Appeals found that the release, or it held, that the release of one of two joint and several persons against whom a tax was assessed is a release of all, unless there is a saver.

The Court: Unless there is a saving clause.

Mr. Walsh: In the release. "In the release" is what the opinion says.

During all the time that --

The Court: And the Court did not have the actual release in front of it. I only had the testimony that such release had been made.

Mr. Walsh: During all the time that we had this matter before your Honor, each of us filed briefs, if you will recall, the Government did not proffer any of its evidence regarding the actual compromise. It is easy to say, "It is available to me," or "It was available to me," but perhaps your Honor has had before you other situations --

The Court: It does not make any difference. The Court sent it back to me to pass on that release. I mean to pass on the original release and to have it in evidence and to determine whether there was a saving clause or not. Isn't that really about the only issue

43 there is, that you or someone has the responsibility of presenting it? The Court did not say who was to present that release, but if it is in the possession of the Government it is their obligation to present it.

Mr. Walsh: Well, it is my contention first that the evidence as it now stands, as it was heard in the first instance, shows that there was a release, and that that release, as the evidence then stood, stands unconditional, there is no condition on that release. At least the testimony does not show it.

In our pleadings, which is our amendment to the answer, to conform to the evidence, we have contended that there was such a release.

In its reply the Government has said that there is such a release but that it is conditional.

I am not squeamish about the burden in this situation, your Honor, but it is strictly a matter of how you want us to proceed.

The Court: I want to see the release offered in evidence, if there is such a release. Then I can determine whether there is a saving clause or not. It seems to me it is that simple.

44 Mr. Walsh: I think it is nearly that simple, but there are qualifications to it, Judge.

The Court: All right. You give me what you think your qualifications are in your statement.

Mr. Walsh: All right.

The Court: I think you correctly stated it. In the first part of it I found for the defendant because the Government did not prove or offer any proof with respect to the Wisconsin tax.

As to the Joliet still the Government offered proof and I found the proprietorship in the defendant. The reviewing court says I am right. But the testimony here was that there was a release. It was oral testimony, notations from the record. You objected at the time, as I recall it, and said that if that was a release that finished it. But there not being a release in front of me, to be perfectly frank with you, I considered it as an abatement rather than a release, because it was mere oral testimony that somebody paid part of it, and, I will be frank with you, at the time I considered it to be your responsibility to get it

here if there was such a release.

The higher court did not say whose responsibility it was, but it did say that it was the responsibility
45 of the Court to see the release. So I am looking for the release.

Mr. Walsh: Well, the release is hardly a single document, unless we take this --

The Court: That may well be. It may be a series of documents, for all I know.

Mr. Walsh: There is a statute of the United States which authorizes the compromise of any internal revenue case, including criminal. It is the only statute that I am aware of that provides for the compromise of a criminal liability. We are not concerned with that in this case. In any event --

The Court: You mean to compromise taxes?

Mr. Walsh: Criminal liability for taxes.

The Court: Any kind of a federal tax may be compromised --

Mr. Walsh: That is right.

The Court: -- but that is about the only kind -- I think you are right.

Mr. Walsh: I know of no other criminal liability that can be compromised. In any event, we are not concerned with that here because we have only the civil liability involved.

The Court: That is right, only the civil action
46 here.

Mr. Walsh: That is, as I understand it, Section 3761 of Title 26.

Is that right, Mr. Pester?

Mr. Pester: As to the compromise of liability?

Mr. Walsh: Yes.

Mr. Pester: I do not recall.

The Court: It is not at issue.

Mr. Walsh: In any event, that authorizes the Attorney General to compromise, with the advice and consent of the Treasury Department, and so on. He can compromise without it, so far as that is concerned, after the case has gone to litigation.

Before it has gone to litigation the Commissioner of Internal Revenue has the power to compromise. The Commissioner has the power to compromise with the

consent of the Secretary of the Treasurer, and there is a provision that the general counsel of the Bureau of Internal Revenue should file a letter of opinion stating the amount of tax and various other data, and that should be kept, that offer, should be kept on file in the Bureau of Internal Revenue.

I presume -- if I am wrong in this then I am wrong in my whole premise -- I presume that this
47 proceeding was under 3761. The offer in compromise is on a form called Form 656, being a printed form issued by the Treasury Department. I don't want to read it in detail, your Honor can read it as well as I can. I have a photostat here of the one that was executed by Mr. Braverman in this case, and that was furnished to me by the Government under prior pleadings.

The Court: Might that not be a very important thing, though? I think the difference between a release of criminal liability -- I don't think there are any uniform rulings with respect to the release of criminal liability, that is, of one co-obligee releasing the liability of the other --

Mr. Walsh: No, I don't think we have that problem here, because here each of the defendants was convicted criminally.

The Court: Then you could not have the problem. It would only be the civil part that would apply.

Mr. Walsh: It is only the civil situation.

The Court: All right.

Mr. Walsh: Mr. Braverman, incidentally, pleaded guilty to this situation.

The offer in compromise is on a printed form,
48 addressed to the Commissioner of Internal Revenue.

Mr. Pester: If the Court please, it seems to me we should get that in evidence first.

Mr. Walsh: This is a descriptive statement. I am perfectly satisfied that it go in evidence.

The Court: Let him proceed to make his statement. All he is doing now is making his statement.

Mr. Walsh: I am perfectly willing that it go in evidence, your Honor.

The Court: Well, I want your statement and then I want their statement and then we will proceed to see what should go in evidence.

Mr. Walsh: Is your Honor's point of view that you must see the release --

The Court: It must go in evidence to the Court of Appeals.

Mr. Walsh: And it is the only way it can be determined, and I am not talking about something extraneous to the record. This document is addressed to the Commissioner of Internal Revenue by Harry Braverman. It is signed by him and is acknowledged before a notary public.

The Court: I think if we are going into the contents of it that counsel is correct. I think before we go
49 into it it should be offered in evidence.

Mr. Walsh: All right. Do you have the release?

The Court: Show it to counsel, and then we will determine whether it should go in evidence.

Mr. Walsh: I would like to have the original release. I only have a photostat.

The Court: Apart from going into the record, have you any further statements to make preliminarily?

Mr. Walsh: Yes.

The Court: All right.

Mr. Walsh: The Government contends, as I understand it here, that there is a saving in this situation under a regulation which was adopted by the Commissioner. It is my contention that the Commissioner had no right or authority under a long line of cases to amend substantial law affecting the rights and liabilities of persons by his regulation. He might have a right to affect the method of collection, but he cannot change my duty or my obligation to the Government by his regulation. He is after all but an employee. He is not in the position of a legislator, he is not in the position of the judiciary, he is not in the position of being chief executive. He acts for the chief executive, that I will agree to, but nevertheless he is no
50 more than a person who is empowered to adopt regulations to effect his duties, but he cannot change what I owe or what I do not owe to the United States. Only Congress can do that, and the courts can decide the effect of the congressional enactment.

Assuming that he was within his powers, which I vigorously disagree with, it is our earnest contention that he did not follow his own regulation in executing

this settlement, and that the document which acknowledged his release, of Mr. Braverman, did not conform to his regulation and in effect was a complete and full release of the whole liability.

I would like to have your Honor bear in mind that all of these transactions between Braverman and the Government were carried out without any knowledge on the part of the defendant before you. That is our position.

The Court: All right. Counsel, may I have your preliminary statement before we proceed with the evidence?

Mr. Pester: If the Court please, it is the Government's understanding, just as it is your Honor's, that this case is here on remand from the Court of
51 Appeals for the purpose of putting in evidence the offer in compromise, and then after that is in evidence the Court is to determine whether or not the Government saved its right to proceed against Mr. Wainer. So in our reply to the amendment to the answer which was filed by the defendant, we attached certified copies of all of the documents pertaining to this compromise, and whether the plaintiff puts in those documents or whether the defendant puts them in --

The Court: It does not make any difference.

Mr. Pester: We are ready to proceed and offer those documents in evidence now, and it is my recollection that the last exhibit that the Government offered at the trial was No. 25, and perhaps these should be numbered 26, 27, and so on.

The Court: Well, that is my understanding.

It would seem to me that the defendant is here in the position of pleading a release and that thereafter the defendant should introduce the evidence. It would seem to me that would be the proper way of doing it. That would be the best way of handling it.

You are looking for the original documents, are you, Mr. Walsh?

52 Mr. Walsh: I don't want to appear hypertechnical, Judge, but this is the situation as I view it: The Court of Appeals has said that the evidence now indicates a release, unless the release shows a saver, that it then is a release of all. I think

the saver is the burden of the Government.

The Court: I agree with you, except the Court merely said there is evidence here that was a release, and it should be sent back to the Court. It doesn't make any difference, you can put it in as the Court's exhibit.

Mr. Walsh: There certainly is no hypertechnical question about that.

The Court: Mark these exhibits beginning with No. 1 as the Court's exhibits pursuant to the direction of the Court of Appeals. Then we will look at them and see if anybody has any objection to them.

Mr. Walsh: May we have the original pleadings in the file?

Mr. Pester tells me certified copies are attached to the pleadings that were filed.

The Court: Here they are.

Mr. Walsh: Thank you, your Honor.

53 I think that by agreement we can perhaps put all of these documents right in evidence, Judge.

The Court: Take a look at them and see if there is any objection to any of them.

You may now mark them Court's Exhibits 1 to whatever number they run to. Then if anybody wishes to object to any one of them, why, we will know about it.

Mr. Walsh: May the record show there is a substantial number of documents attached to a pleading entitled "Reply to the defendant's first amendment to the answer," and that these documents are attached as exhibits --

The Court: May it also be agreed that each and every one of those instruments is duly authenticated and that there is no objection as to the form of the certification?

Mr. Walsh: I don't know of any. I have looked at the ones which Mr. Pester has given me. Just to bar an accident I would like to look at these.

The Court: All right. Take time and compare them.

Mr. Walsh: Thank you.

54 Defendant has two objections to these documents.

The Court: Is there any objection as to the form, the certification?

Mr. Walsh: No, your Honor.

The Court: All right. It is understood that neither of the parties is making any objection to the form, the authenticity or the genuineness of the instruments, but reserving all objections that they wish to make in order that they may specifically state such objections against each and every instrument as offered.

Mr. Walsh: One of my objections to one of the documents may have something to do with the certification, Judge. I don't think there is anything wrong with your statement, however. I don't quarrel with the person who certified them, I do not quarrel with his right to certify them, I do not quarrel with the fact that he, if called, would say that these are the official documents.

The Court: Let us have them marked, and then make any objections.

Mr. Reporter, will you mark them, beginning with Court's Exhibit 1.

Then either of you has the right to attack it.

55 I think I will not call them Court's exhibits. I think it is the Government's responsibility and this first one should be Government's Exhibit 1.

Your last exhibit was No. 25?

Mr. Pester: The last one was 25.

The Court: Let us make it Government's Exhibit 26, because the Court I believe places the responsibility of showing there was a saving clause on the Government.

(Said documents were respectively marked Government's Exhibits 26 to 34, inclusive, for identification.)

Mr. Walsh: The defendant objects --

The Court: For the record now, will counsel for the Government state that you are offering these in evidence now, naming them for the record, so that we may have proper objections?

Mr. Pester: If the Court please, the Government now offers in evidence Government's Exhibit 26, which is an offer in compromise signed by Harry Braverman on Form 656.

The Government offers in evidence Government's Exhibit 27, which is a statement of financial
56 condition and other information, signed by Harry Braverman, and submitted with the offer.

The Government offers in evidence Government's Exhibit 28, which is a statement signed by Harry Braverman on February 3, 1941, subscribed and sworn to before Percy D. Graham, a deputy collector. It has no caption.

The Government offers in evidence Government's Exhibit 29, which is a mimeograph pertaining to the compromise of joint assessments of internal revenue taxes pertaining to alcoholic liquors, and it bears these symbols, "Commissioner's mimeograph, Collector's No. 4749 AT No. 158."

Mr. Walsh: Excuse me, Mr. Pester.

Your Honor understands I am reserving my objection until he finishes?

The Court: Yes. Let him offer them all at once for convenience.

Mr. Pester: And the Government offers in evidence as its Exhibit No. 30, which is an abstract and statement, dated June 18, 1941, with the statement of facts, a letter to the Collector of Internal Revenue in Chicago, dated December 30, 1941, and schedule
57 of acceptance of offer attached. It was signed by W. H. Kennedy, Deputy Commissioner of Alcoholic Tax Unit, pertaining to the offer in compromise of Harry Braverman, Chicago, Illinois. That has several documents in it. And the Government offers in evidence its Exhibit 31, containing two copies, that is, one copy each of two letters, dated September 22, 1941, pertaining to Harry Braverman, and one is addressed to the supervisor in Chicago, Illinois and the other to the Collector of Internal Revenue in Chicago, Illinois.

And the Government offers in evidence its Exhibit 32, which is a certified copy of a schedule of accepted offers in compromise on Form 7878, which shows acceptance of the offer in compromise of Harry Braverman and the payment of $5,125.90.

Then the Government offers in evidence its Exhibit 33, which is a certified copy of a letter sent to Mr. Harry Braverman advising him of the acceptance of his $5,000 offer which is dated December 22, 1941.

Government offers in evidence Government's Exhibit 34, which was not attached to the reply that was

58 filed, which is a certified copy of a statement of facts signed by Harry Braverman, no date on the document.

The Court: Counsel, have you objections?

Mr. Walsh: Yes, your Honor.

The Court: As I understand it, you are not objecting as to the form or authenticity but you are reserving the right to make objections to each or any of said instruments, other than as to the form and authenticity.

Mr. Walsh: In taking that position I am assuming that certainly the Government would not attach these to its pleading if they were not the records in their file, and I agree with your Honor's statement.

With regard to the offer in compromise, which is Government's Exhibit 26, defendant has this objection, that on its face it is not complete. The document is headed "Form 656(c), Treasury Department, Internal Revenue Service," and it reads in part as follows, after naming Harry Braverman and his address:

"The following offer in compromise is submit-
59 ted to you by the undersigned" --

Addressed to the Commissioner of Internal Revenue --

"Charges of violation of law or failure to meet an internal revenue obligation have been made against the proponent as follows," --

That is printed.

Then there is typewriting, to fill in a blank:

"Failure to pay distilled spirits as follows,"

and it names the tax, and then come the date and place of the alleged violation, which is empty.

The next paragraph, printed, starts off:

"The alleged violation or failure is due to the following cause or causes:" --

And then there is a blank for the proponent to fill in.

Typewritten over the printed words "State in detail," are the words "See statement attached."

There is no statement attached. The typewritten
60 words are apparently the words of the proponent.

Then following two or three paragraphs down this form reads as follows, in printing:

"The following facts and reasons are submitted as grounds for acceptance of this offer:" --

Then there is a blank, several lines, and in those lines

are the typewritten words, "See statement attached."

There is no statement attached.

There does appear on the face of this form a mark which might or could have been made -- and this is in the right-hand margin, the upper half of the document, a mark which might or could have been made by a staple or perhaps it is a pencil mark, I have no way of determining that, and about in the middle of it is a blank which is either caused by placing some document over the document which was photostated or something torn which might have been attached to it, I don't know. But I don't know what the statement attached is. I think it is of vital significance in this case, particularly because the offer and its acceptance are the very things upon which your Honor is called upon to rule.

61 Here we have the offer in compromise, and it is incomplete. There is not any way I can get it that I know of. I can subpoena or demand, but I am sure that if the Government had it they would produce it. If they do not they undoubtedly have an explanation for it.

Secondly, there is a characterization of a document here called --

The Court: What bothers me about this objection is that if this release is objected to and is not proper then we have no release at all.

Mr. Walsh: We have the Government's own statement and acknowledgment that it has released one of the co-obligees.

The Court: We have the statement of one of its witnesses that it appeared to have been a release. Wasn't that what that witness stated, and the higher court said it was a release and that it ought to be produced?

If it goes back to the higher court and the release is refused to be admitted into evidence because it is not complete, then there is no release. What will the higher court say then? They will say, "Well, if there is no release we were wrong."

62 Mr. Walsh: Your Honor, the record now shows that the records of the United States, of the officer charged with the collection of this item, and

they are in evidence, Miss Mines was testifying, and they show an offer in compromise accepted from Harry Braverman.

The Court: That was in effect a statement in a ledger, so to speak, a ledger account.

Mr. Walsh: A record which must be made and kept in the ordinary course of their business.

The Court: An abstract, and the Court up there wants to see what was done. Could I refuse what is offered here, so that if it comes before that Court it may not see what the Government bases those records on?

Mr. Walsh: I would say that it is the burden of the Government now, not my burden, to show that there is a compromise. It is their burden now to show there is a saver in a compromise which has been established by the evidence already heard.

The Court: And your further objection to No. 26 is what? I interrupted you. I am sorry.

Mr. Walsh: On that I think there is nothing further.

The Court: I should not say I am sorry when I
63 interrupt lawyers, because I will be perfectly frank with you that I am not. I interrupt on purpose to find out something.

Mr. Walsh: On this document, Government's Exhibit 28 --

The Court: I did not want to stop you. You were about to add an objection to No. 26 when I asked you that question. I think you said, "I further object," or words to that effect, and I wanted to clarify that. You seemed to have some other objection. I did not mean to break your train of thought.

Mr. Walsh: No, I intended to go to 28.

The Court: Your next objection goes to Exhibit 28?

Mr. Walsh: Yes, to Exhibit 28. There, as I noted to your Honor when statements were made about objections to certification, I want to call this to your Honor's attention. The certification document reads:

"I certify that the annexed is a true copy of the stipulation dated and executed February 3, 1941 by
64 one Harry Braverman in reference to an offer in compromise."

I believe that the evidence will contradict that statement. It was not executed on February 3.

The Court: Then I will take this other evidence and this evidence and put them together and draw a conclusion as to which is correct.

Mr. Walsh: The document bears the date of February 3, and I assume the certifying officer made his conclusion from the writing on the document.

Defendant objects to Government's Exhibit 29, which is headed "Treasury Department, Office of Commissioner of Internal Revenue, Washington, D. C.," and then it bears a heading on each sheet, and it is composed of four pages.

The Court: Is that what is called a mimeographed sheet?

Mr. Walsh: Yes, as I understand it. There is a heading "Com. mimeograph. Coll. No. 4749 AT. 158," and that last mentioned thing appears on each page thereof and I suppose it is to identify it as being a part of it.

We object to that as being a document which purports, as I understand the Government, to be a document which governs this release procedure.
65 As I understand it, such a document in order to have any effect on a third person, an outsider, just a citizen, must be published in the Federal Register. There is not any indication that this ever was. It appears to be an inter-departmental communication. I do not believe, and I assert that the law is, that you cannot change the law by an inter-departmental communication and have it affect just the rest of us, or outside the department.

Along with that, I contend that the document -- maybe this is not an objection as it is offered in evidence, but I would like to assert it at this point, that the document purports to be an exercise of authority that the Commissioner just did not have. It was a change in substantive, real law. It changed liabilities of people to the Government, and the Commissioner when he did that arrogated to himself some duties that only come to Congress and that can only be performed by Congress in accordance with the Constitution.

I recognize that there is a long line of cases saying that commissioners have the right, the executive has the right, to adopt regulations which are necessary for the performance of his duty, and so forth, and

6 every once in a while through necessity and vicissitude of time they adopt regulations and executives do perform things that perhaps in a quieter time we would not abide by. Nevertheless, from time to time the courts remind these executives of their duties. The classic case is the Schecter case on the NRA. There they were not announcing a new theory. We can go back as far as United States v. Eaton. There they said that the Commissioner can adopt regulations on oleomargarine but he cannot make a criminal law. That is an instance.

In, I think it is, Merrill v. Jones the Supreme Court held specifically, and this is the case which I think governs our case, that the commissioner, while he can adopt regulations to enforce his law, that is, the statute which he is bound to enforce, which are reasonable, he cannot adopt a regulation which changes anyone's liability.

The Court: Is this a change in liability or is this a release?

Mr. Walsh: This document on its face is a change.

The Court: Then the liability was there. This
67 resolution would not be imposing the liability. It is a question governing the release of the liability, isn't that right?

Mr. Walsh: I think it does. Let me point out to your Honor on what I base this.

The first page of Government's Exhibit 29 reads:

"Dated March 25, 1938, Commissioner's mimeograph, Collector's No. 4749" --

I don't know what AT means, but it has No. 158,

"Compromise of joint assessments of internal revenue taxes pertaining to alcoholic liquors."

It is addressed not to the nation or to the people, but it is addressed to Collectors of Internal Revenue. It is an inter-departmental communication. It is also addressed to district supervisors and other internal revenue officials and employees.

"Statement of policy."

It recites then that Section 1150(d) of Title 28, USC, 1934 Edition, reads as follows, and it is the statute
68 which establishes joint and several liability on proprietorship of stills. We are past that, that has been established here.

"2. Under this statute" --
This is the commissioner speaking --
"Under this statute numerous assessments are made against two or more taxpayers each of whose liability is joint and several. Heretofore the Bureau has pursued a policy whereby the acceptance of an offer in compromise from one of two or more taxpayers jointly and severally liable to a single assessment disposed of the entire assessment and released all of the remaining taxpayers named therein from further liability.
"3. After further study of the statute, the conclusion has been reached that in view of the discretion vested in the Commissioner of Internal Revenue by virtue of Section 1661(a), Title 26, USC, 1934 Edition (Section 3229, R. S.)" --
I might say, Mr. Pester, it is probably due to my unfamiliarity with these sections, but I cannot find that section; it is not in the United States Code Annotated, at least.
69 "if an offer submitted by one of two or more taxpayers named in a single assessment, is accompanied," --
This is underlined in their document --
"is accompanied by a stipulation that it is to cover the liability of the proponent alone, such offer may be accepted in compromise of such proponent's individual liability without releasing the remaining taxpayers from liability for the assessment, less the amount of the offer."
That was dated March 25, 1938. That document was in existence, your Honor, when we had this question before us before, when our briefs were written and your Honor spent time to determine that point. None of us heard of it, because it does not affect us. It only affects them.
The point is that that, in my opinion, is about as deliberate, as positive, an attempt by an executive officer to change the existing law, the custom, the deal, to change the liabilities, as any executive has ever attempted.
The Court: Isn't that just, in effect, equivalent to saying, "Hereafter we will not give any more releases,

70 we will only give a covenant not to sue"? Isn't that a matter of policy?

Mr. Walsh: I don't find any authority in any statute.

The Court: To be perfectly frank with you, I don't see that this instrument, as I see it now, is helpful or can determine the issue at all. The question is whether the release was there or not.

I presume the Department had the authority. I do not see any help that this instrument is to us, whether it is in the evidence or not in the evidence. It seems to me it does not make any difference. I presume the Department had that authority unless it was shown to the contrary. I would presume they could release either way.

Mr. Walsh: Oh, I think no authority can be assumed for any governmental department unless it is established, unless you can find it in the book. No authority comes to any government officer of the United States --

The Court: To choose between whether he will release one or two?

Mr. Walsh: I don't believe so.

71 The Court: It would be a form of releasing.

Mr. Walsh: I don't believe so, because here is the point, your Honor --

The Court: Well, I agree with you that a commissioner cannot make law. However, he can make rules and regulations.

Mr. Walsh: Yes, and when he decides that A and B are liable, and I will take $5.00 from B and stick A, he might just as well not only be a Senator and a Congressman, but he might as well be the whole works on that item.

The Court: I don't know. I cannot quite agree with you there. It depends upon what his authority is behind the scene. If he has authority to use his discretion as to whether to compromise claims or not -- he might be willing to compromise against one man who is near bankruptcy and take a small amount and release him and get what he can and gamble on the other one, or wait until he can catch him. I cannot see that this makes too much difference.

Mr. Walsh: Well, let us consider Braverman here. Braverman came --

The Court: I am interested in what is said all the way through these instruments. I have not seen
72 them all.

Mr. Walsh: All right.

The Court: I don't think this instrument makes too much difference, even if it were not offered.

Mr. Walsh: Well, let me point this out, your Honor. This document prescribes in no indefinite or uncertain terms exactly the procedure that the officers of the Collector, and so forth, are to follow in granting such a special release.

The Court: That merely does that, but it would not make any difference to me whether that was before me or not if they have the authority.

Mr. Walsh: Well, I think it would go a long way toward indicating whether or not such a release was intended. If the Commissioner instructs his people that in accepting a certain type of release they should perform in this fashion, and then they perform in a different fashion it would indicate that perhaps they did not follow the thought he had, isn't that true?

The Court: Well, I think this, that whether they followed exactly the form or not, if they issued the release to Braverman they could not later come in and sue Braverman, could they? Just because some clerk failed to follow the procedure, some sub-
73 ordinate, and if the Government takes his money and signs a release, I think the fact that somebody in a ministerial manner would not follow the procedure would not make a bit of difference. Braverman was to be released if a suit were brought against him.

Mr. Walsh: And as a collateral issue his co-assessee would be released unless the document was followed.

The Court: Unless there was a saving clause in here, the defendant Wainer will be released. That is what the higher court said. Unless there is a saving clause somewhere within the confines of these instruments that are offered in evidence.

Mr. Walsh: Well, I think I have stated my objection to the document as being a self-serving attempt by the Commissioner to change the law by a regulation.

The Court: All right. That constitutes your objections?

Mr. Walsh: That is right, yes, sir.

The Court: Do you have any comment?

Mr. Pester: I would like to comment with reference to this Form 646(c) where --

The Court: That is what, Exhibit 26?

74 Mr. Pester: That is Exhibit 26.

The Court: As to the incompleteness?

Mr. Pester: That is correct, your Honor. We have offered in evidence, in addition to 656, two other exhibits which have been signed by Braverman, and one of them is the financial statement. I don't know whether that refers to the first provision in 656 where it says, "See statement attached," or what that refers to. Then we have our Exhibit 34 which is a statement that was signed by Mr. Braverman. So we have here two statements in evidence, but they were not attached to the 656. We have brought them here, we don't know whether the financial statement that Braverman gave should be the first one or whether it should be the second one, or whether the statement of facts which Mr. Braverman gave should be the first one or the second one. But we have here the instruments that Mr. Braverman executed and which are a part of the files of this settlement offer.

The Court: All right. What do you say as to the objection to No. 29, which counsel discussed at length and concerning which I asked him a number of questions?

75 Mr. Pester: That is with reference to the mimeograph, your Honor?

The Court: That is right.

Mr. Pester: The purpose of that mimeograph was to instruct the employees of the Department with reference to their procedures and it in no way changed the law. In other words, prior to --

The Court: Am I correct in my assumption that it would not make any difference whether he had that here or not?

Mr. Pester: I think you are correct, your Honor. It seems to me it is a question of what was done here.

The Court: A summary of the procedural steps that are supposed to be taken?

Mr. Pester: Well, I don't know that the summary of the procedural steps is material. It is a question of what was actually done in connection with this offer.

The Court: That is my viewpoint.

Mr. Pester: What did Braverman submit to the Department and how did the Department treat that offer and accept it?

In conjunction with this Government's Exhibit 29, that was submitted because of this statement
76 that Mr. Braverman gave, dated February 3, 1941, being Exhibit 28.

When Mr. Braverman submitted this offer to the Deputy Collector of Internal Revenue, in conformity with this mimeograph which is our Exhibit 29, they had him execute this statement whereby he was submitting this offer for his release only and his release was not to affect anybody else, and it was in connection with this to show the reason for the document which is our Exhibit 28 that we submitted this mimeograph, and we have a witness here in court, which I do not think it is material, but we have him here to show what the practice of the office here in Chicago was after they received this mimeograph, in connection with--

The Court: You are referring to this statement where it ends up by saying, "It being understood that this undertaking shall not release any other person from liability under said assessment?" Is that what you are referring to?

Mr. Pester: That is what I am referring to, yes.

The Court: That is Exhibit 28.

Did you make an objection to the introduction
77 of Exhibit 28?

Mr. Walsh: Oh yes, we did.

The Court: That is the one I probably interrupted you -- oh, it is inconsistent as to the date of execution?

Mr. Walsh: I believe that the proof will show that it was not executed on February 3. On its face, your Honor, you can see where I started with this difference. It says:

"Subscribed and sworn to before me this 3rd day of February, 1941, Percy Graham, Deputy Collector."

I understand Mr. Graham is dead. Is that correct?

Mr. Pester: That is correct.

Mr. Walsh: So he is not available. But the offer in compromise itself is also dated February 3, 1941, and it is acknowledged before Harry K. Jacobs, Notary, a different person.

We believe the testimony will show that this last Exhibit 28, purporting to have Braverman's signature and acknowledged before Mr. Graham, was an afterthought by the Collector, which was not submitted with the offer under his regulation, which is the way that he will save himself from releasing
78 other persons in such cases; it was something that they sent a man out to get or had Braverman come in to execute in some fashion. But separate and distinct, it was never attached to offer in compromise, never inserted in accordance with the -- the Commissioner says, "I will release one person conditionally and keep a saver against the others in this fashion," and he does it by a regulation. He has got to do things in that fashion, Judge, or we don't know how to conduct ourselves in our transactions with him. So he draws a regulation and he sends it out. He says, "When you want to accept an offer from a person and save the right to proceed against the others, then you will have the Collector of Internal Revenue --" shall advise with the man making the offer and see that he inserts in a certain place in this offer certain words, not just general words of general impute that we might draw as lawyers, but specific words. Those are the words by which he intends to save.

That was not done here, and there is nothing in this offer in compromise to show that those words had anything to do with the offer, other than just the words. But under the regulation, they are
79 not connected with the offer and they are not inserted at the proper place.

I must be technical in such a case as this, but I do not want to appear unreasonable. Obviously the words

impute that, "My liability shall not be enforced against me, it being understood that this undertaking shall not release any other person from liability under the said assessment, Harry Braverman."

But that is only Harry Braverman. It is not the Commissioner, and the Commissioner has not done a thing yet. It is not inserted in the offer in the fashion that the Commissioner said it should be inserted.

So then we will proceed toward the climax --

The Court: I have considered these objections. In my judgment they should be overruled and each of these instruments should be admitted in evidence and they are admitted.

(Said exhibits, so offered and received in evidence, were respectively marked Government's Exhibits 26 to 34, inclusive.)

The Court: With that, is there any other evi-

80 dence to be offered by either side?

You indicated you have some testimony to be offered concerning this.

My idea is that the instrument, being offered, is in good form and should be received as it purports to be. You might be able to show by testimony that it is not true, that it is not correct, that it was not executed at that time.

You have that right. You also have indicated you have some witness with whom to go forward.

Suppose we let the Government proceed with whatever evidence it wishes to go ahead with, in addition to these exhibits which are offered, and then we will call on the defendant to present any evidence he wishes in response to these exhibits and testimony.

Mr. Pester: If the Court please, we have one witness here whose only purpose was to testify that Percy Graham who acknowledged Mr. Braverman's signature on that statement of February 3, 1941, is dead. If it is agreed that --

The Court: Counsel has already made the statement that he has learned of his death and understands it.

81 Mr. Walsh: Yes.

The Court: There is no question about that. You make no point of that, do you?

Mr. Walsh: No, your Honor. I have been informed by the Government --

The Court: It is stipulated that the witness --

Mr. Pester: John Moynihan.

The Court: -- that the witness John Moynihan, if called, would testify that Percy Graham who took this acknowledgment from Braverman is now deceased.

Mr. Walsh: Yes, your Honor.

Mr. Pester: Now, if the Court please, I would like to call Mr. O'Grady.

82 HARRY O'GRADY, called as a witness herein on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Pester

Q. State your name, please.

A. Harry O'Grady.

Q. What is your residence?

A. My present residence is 1032 Loyola Avenue, Chicago.

Q. What is your employment?

A. At the present time I am the Collection Officer in the Internal Revenue Service.

Q. Where did you say you are employed?

A. I am employed in Evanston, what is known as a Type A office of the Internal Revenue Service under the District Director at Chicago.

Q. How long have you been in the Internal Revenue Service?

A. Since 1935.

Q. And did you know Percy C. Graham?

A. Yes.

Q. And what work did you do in 1941 on February 3?

A. At that time I was his assistant in the
83 investigations of offers in compromise.

Mr. Pester: May I show him a copy of this exhibit?

The Court: Yes.

Mr. Pester: No. 29, this mimeograph.

The Court: Show him the original.

By Mr. Pester: Q. Government's Exhibit 29, and I ask you to state whether you are familiar with that mimeograph.

A. I was at that time, I was familiar with it.

Q. Do you mean in 1941?

A. That is right.

Q. And what did you do in connection with offers in compromise when received where there were two or more assessees?

A. Then we considered the offer should be specific in regard to the liability to be compromised; in other words, if there were more than one assessee and the offer was coming from only one assessee then we customarily obtained a stipulation from the offeror limiting consideration to his own liability.

Q. Calling your attention now to Government's Exhibit 28, I will ask you to state whether you are
84 familiar with that stipulation?

A. Yes, very familiar with it.

Q. And when were those stipulations taken in connection with the receipt of an offer?

Mr. Walsh: I object to this. The matter appears to be a little general. The question led off with "Are you familiar with the type," and then with the stipulation, and the witness has answered he is very familiar. I don't know whether he is talking now about that particular document. If he is very familiar with that document I would like the record to indicate that is what he means.

The Court: I understand he has offered to show the procedure followed.

Mr. Pester: That is correct.

The Court: That they followed such a procedure. Is that not what you are offering it for?

Mr. Pester: That is what I am offering it for.

The Court: Solely limited to the procedure then
85 followed.

Mr. Pester: Correct.

The Court: Seeking to establish something probably by circumstantial evidence?

Mr. Pester: Well, to establish the time when this was probably taken, yes.

The Court: He may answer. Objection overruled.

The Witness: Will you repeat the question, please?

The Court: Read it, Mr. Reporter.

(The last question was read by the reporter.)

The Witness: Well, during the pendency of the investigation --

Mr. Walsh: I object to this, your Honor. The question, as I understand it, calls for a date. He is talking about that stipulation. That is the way the record will appear.

The Court: The record says, "during the pendency of the investigation." That is his answer. I can't make his answer for him. I think he has answered the
86 question in his own words.

Mr. Walsh: All right.

The Court: Objection overruled; it may stand.

By Mr. Pester: Q. Was a stipulation like this prepared each time an offer was submitted or did you have a form that you use?

A. If we followed the customary procedure, yes, but I am not familiar with individual offers. There may have been one at some time or another that failed to have this stipulation on it. But the procedure was to have them on each time.

Q. But what I am asking you is whether you had forms like this available when offers were submitted in connection with -- where there was a liability of two or more assessees?

A. Yes, we had.

Q. And who had prepared those?

A. The typist.

Mr. Pester: I think that is all.

The Court: You may cross-examine.

87 Cross Examination by Mr. Walsh

Q. Mr. O'Grady, how long were you with the Treasury Department? Going back to 1941, how long had you been with the Treasury Department then?

A. I began in 1935.

Q. 1935, and you were familiar with the procedure in the Treasury Department prior to March 25, 1938, is that the fact?

A. That is right.

Q. How long had you been engaged in this offer in compromise work?

A. Oh, as I recall it was in either the latter part of 1935 or the early months in 1936.

Q. Were you aware of a change that was effected in 1938 in the operation of acceptance or action upon offers in compromise?

A. Well, at that time we were unaware of the beginning of the procedure where we requested stipulations for a single proponent, where he made an offer.

Q. I will now show you Government's Exhibit 26 and I ask you if that document any place contains any
88 stipulation or reservation of an action by the Government.

A. Well, I don't know whether I can testify to any particular offer.

Mr. Pester: It seems to me that is objectionable on the ground the instrument speaks for itself.

The Court: Objection sustained. You can show that to the Court in the argument as to whether it has or not.

Mr. Walsh: If it please your Honor, this man has been offered as an expert on procedure.

The Court: That may be so, but it either contains that statement or it does not. You can read it to me if it does contain it.

Mr. Walsh: All right.

The Court: The witness says he would have to read it. It is a long document.

Mr. Walsh: All right.

Q. Let me ask you this: Are you familiar with Form 656, offer in compromise?

A. I have been familiar with it for a good many
89 years.

Q. Are you aware, in the course of your experience, of any reservation in that document of an action against any other person other than the man who makes the offer?

A. I don't believe I understand that question.

Q. Are you aware of anything in that document which would reserve to the Government a right to sue another person, a person other than the one making the offer?

A. Well, if you are confining it to the form itself --

Q. That is right.

A. -- of the printed form?

Q. That is right.

A. There isn't anything in there -- it is a form drawn up to use in all offer cases.

Q. I would like to show you Government's Exhibit 26, page 2 of that exhibit, headed, "Recommendation submitted by the Collector."

Are you familiar with such a document?

A. No, sir.

Q. Or such a form?

A. No, I am not.

90 Q. Have you ever seen such a form?

A. Those were prepared and completed after they left our investigation department.

Q. I see. Will you examine page 2 of Exhibit 26 which has such a heading, "Recommendation submitted by the Collector," and state whether or not it purports to refer to other offers by Harry Braverman.

A. Well, it doesn't --

Mr. Pester: If the Court please, it seems to me that the instrument speaks for itself. I am going to object to it.

The Court: That is so, but I think you may ask him about that and save counsel going through it. He is on the stand there. He may ask him that. That is a simple matter, to tell whether there is any reference to it. If it was a long reading, why --

Mr. Walsh: Well, as an expert, your Honor, I am asking him to explain symbols such as "O.C.Rej. per Bur. Ltr. 6440."

To me that means "Rejected per Bureau
91 letter." I just want to know whether that is what it means to a man who works for the Bureau.

The Witness: That is what it means to me, "Offer in compromise rejected per Bureau letter."

Q. All right. And there are several such entries on that document, are there not, on that page, page 2 of Exhibit 26, is that right?

A. That is right.

Q. I believe on your direct examination you were asked about Exhibit 26 and forms similar thereto. Is that correct?

A. That is right.

Q. That is Exhibit 28, excuse me. Is there anything on that document which would identify the offer in compromise to which it refers?

A. Are you asking me as a general question or whether it pertains to this offer?

Q. To that document.

A. I don't know.

Q. If there is anything about that document which indicates to you it refers to a particular offer in compromise.

A. If you would show me a blank without any
92 signatures on it I would say no, there was no reference to any particular offer on that.

Q. All right. Now assume that there is a date and the name, and that the person whose name is attached thereto has made several offers at various times. Is there anything about that document which would indicate to you that it pertains to a specific offer?

A. Only if it were attached to the offer itself.

Mr. Walsh: That is all.

Mr. Pester: That is all.

The Court: Witness excused.

(Witness excused.)

The Court: Does that conclude the Government's testimony?

Mr. Pester: That concludes the Government's testimony and we rest.

The Court: All right. The defendant may proceed.

Mr. Walsh: Your Honor, I was away for about a week and returned yesterday. If you will recall, the last time we were here this date was tentative.

I would like to produce Mr. Braverman and
93 present him as a witness. My client talked to him this morning, and he won't appear without a subpoena, and we haven't been able to serve him with a subpoena since that time. I just can't do it this afternoon.

I would expect his testimony may not be particularly important.

The Court: What do you propose to prove by him?

Mr. Walsh: I propose to prove by him that he did not sign this document on the same day that he executed the offer, that it was brought to him not by Mr. Graham, and that he signed it in order to accomplish his offer in compromise. He was advised to do it, and that is all there was to it. That's it.

If the Government is willing to stipulate that he would so testify -- I don't know, they may have interviewed him.

110 Government's Exhibit 26 (Continued)

Form 656 C
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised Oct. 1940)

OFFER IN COMPROMISE
(DEFERRED INSTALLMENT PAYMENTS)

To be filed in duplicate with collector for your district

FOR USE OF COLLECTOR

Class of tax: Dist Spts

Serial No. 891344

Serial No. 443

Amount paid, $ 1.00

CERTIFIED CHECK CASH M O

Harry Braverman
(Name of taxpayer)

4834 N. Kimball Avenue, Chicago, Illinois.
(Address of taxpayer)

Date February 3, 1941

COMMISSIONER OF INTERNAL REVENUE

Through the Collector of Internal Revenue at Chicago

SIR:

The following offer in compromise is submitted to you by the undersigned.

Charges of violation of law or failure to meet an internal-revenue obligation have been made against the proponent as follows: failure to pay distilled spirits tax as follows: Dec. 1933 P.T. List P-339 L 7, $8,765.78; July 1938 List P 333 D 7, 81,911.20; Total Liability $40,674.98

Date and place of alleged violation

The alleged violation or failure is due to the following cause or causes: See statement attached.
(State in detail)

To secure the release of the proponent from the liability resulting from the violation or failure above specified, the sum of $ 5,000.00 is to be paid as follows: $1000.00 pd. 7/8/40 balance of $4000.00 payable at the rate of $200.00 per month for the first six months from date offer is signed, balance of $2800.00 payable at the rate of $400.00 until paid.
together with interest at the rate of 6 percent per annum on all deferred payments from the date this offer is received by the collector until the respective payments are made in full, is hereby tendered voluntarily with request that it be accepted in compromise of the said liability, to wit: Balance D. S. Tax $8004.48 for period 3/26/32 - Dec. 1933 Pro Narcotic and $31,911.20 for period 3/25/36 July 1938 Liab + plus all interest accrued and accruing.
(State in detail the tax liability for each period involved, for which compromise is sought, and the totals)

To secure the release of the proponent from the liability resulting from the violation or failure above specified, the sum of $ 5,000.00 is to be paid as follows: $1000.00 pd. 7/8/40 balance of $4000.00 payable at the rate of $200.00 per month for the firs. six months from date offer is signed, balance of $2800.00 payable at the rate of $400.00 until paid.
together with interest at the rate of 6 percent per annum on all deferred payments from the date this offer is received by the collector until the respective payments are made in full, is hereby tendered voluntarily with request that it be accepted in compromise of the said liability, to wit: Balance D. S. Tax $8004.48 for period 3/26/32 - Dec. 1933 Pro Narcotic and $31,911.20 for period 3/25/36 July 1938 Liab + plus all interest accrued and accruing.

As a part of this offer, it is agreed that upon notice to the proponent of the acceptance of this offer in compromise of the liability aforesaid, the proponent shall have no right, in the event of default in payment of any installment of principal or interest due under the terms of the offer, to contest in court or otherwise the amount of the liability sought to be compromised, and that in the event of such default the Commissioner of Internal Revenue, at his option, (1) may prosecute suit to collect the entire unpaid balance of the offer, or (2) may disregard the amount of such offer and all previously paid thereunder against the amount of the liability sought to be compromised and may, without further notice, assess and/or collect by distraint or suit (the restrictions against assessment and/or collection being waived) the balance of such liability. (This paragraph shall not apply where a surety bond is given to secure amount offered in compromise.)

The following facts and reasons are submitted as grounds for acceptance of this offer: See statement attached

(If space provided is insufficient, attach supplemental affidavit and supporting evidence)

It is understood that this offer does not afford relief from the liability sought to be compromised unless and until accepted by the Commissioner, with the approval of the Secretary of the Treasury, or of the Under Secretary of the Treasury, or of an Assistant Secretary of the Treasury, and the terms of this offer have been fully complied with.

In making this offer, and as a part consideration thereof, the proponent hereby expressly agrees that all payments and other credits heretofore made to the account(s) for the period(s) under consideration shall be retained by the United States, and, in addition, the proponent hereby expressly waives:

1. Any and all claims to amounts of money to which the proponent may be entitled under the internal-revenue laws for any years, calendar or fiscal, or for any period fixed by law, expiring prior to the date of acceptance of this offer, due through overpayment of any tax or other liability, including interest and/or ad valorem penalty, or interest on overpayments, or otherwise, as is not in excess of the difference between the liability sought to be compromised hereby and the amount herein offered, and agrees that the United States may retain such amounts of money, if any.
2. The benefit of any statute of limitations applicable to the assessment and/or collection of the liability sought to be compromised, and agrees to the suspension of the running of the statutory period of limitations on assessment and/or collection for the period during which this offer is pending, or the period during which any installment remains unpaid, and for 1 year thereafter.
3. The right of appeal to the United States Board of Tax Appeals and the restrictions on assessment and collection with respect to the amount of the liability sought to be compromised.

(If offer is made by agent, the reason therefor must be stated on this line)

Sworn to and subscribed before me this 3rd day of Feb., 1941

Harry K. Jacobs, Notary
(Signature of officer administering oath)

Harry Braverman
(Signature of proponent or agent)

(Address of agent)

Waiver of statutory period of limitations is hereby accepted, and offer will be considered and acted upon in due course.

Guy T. Helvering
Commissioner of Internal Revenue.

By Charles D. Hasson
Collector of Internal Revenue.

SEAL

16—14140

Mr. Pester: No, I would not stipulate that he did not sign that in the presence of Graham.

Mr. Walsh: All right.

The Court: What is the status of the law with respect to a man disputing -- the only person who signs an instrument disputing that he signed it before a
94 notary public? I think there are some Illinois cases on that, about a man who signs an instrument himself before a notary public, it takes more than his evidence to overturn it.

I know because I went to the Illinois Supreme Court on that question.

Mr. Walsh: Well, that raises another --

The Court: Of course, this is not here as a diversity matter. It is a federal matter, but I would tend to follow the Illinois rules unless there is a federal authority contrary.

Mr. Walsh: This is not a notary. This is a deputy collector of internal revenue.

The Court: I think that case is so worded that it would cover any taking of an acknowledgment.

Mr. Walsh: Well, I am only trying to indicate what distinction there might be. It is possible that his wife might be a witness in such a situation.

Other than that I can close and present Mr. Braverman just as soon as we can get him here by subpoena.

The Court: When can you have him here, in the morning? Do you know where he is?

Mr. Walsh: We know where he was this morning. He was in his place of business, but he is not
95 anxious to be a witness, Judge.

The Court: We will continue it until in the morning at 10:30 and give you an opportunity to subpoena him and his wife and bring them in here.

Mr. Walsh: All right, sir. I could present Mr. Wainer, whose testimony will only be --

The Court: Let's take whatever testimony you have except that. I don't want to deprive you of your witness. You might as well inform that fellow, there is not any use of his hiding, because we will get him sooner or later.

If you want him we will subpoena him, we will get him sooner or later, so he might as well come tomorrow morning.

96 ALLEN WAINER, the defendant herein, called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Walsh

Q. Will you state your name?
A. Allen Wainer.
Q. Where do you live?
A. 918 Winona.
Q. You are the defendant in this lawsuit?
A. I am.
Q. Mr. Wainer, I direct your attention to the year 1941, and ask you where you were at that time.
A. 1941? I was --
The Court: That was all gone into before. I am familiar with that.
By Mr. Walsh: Q. Can you recall? I mean, were you serving a sentence?
A. Yes, I was.
Q. In one of these cases. I am sorry to embarrass you.

97 The Court: That is all right. I remember the testimony. I reviewed this case. I am familiar with all the facts.

By Mr. Walsh: Q. Mr. Wainer, were you familiar in any manner at all, did you have any knowledge of any offer in compromise by Mr. Harry Braverman in connection with a joint and several assessment against you and Mr. Braverman for distilled spirits tax?
Mr. Pester: If the Court please --
The Witness: I did not.
Mr. Pester: -- that is objected to as immaterial.
The Court: I will grant you it is immaterial, but I will let it stand.
By Mr. Walsh: Q. When did you first learn of such an offer having been made?
A. When this case began.
Q. At the trial?
A. That is right.
Q. The last trial?
A. Yes.

The Court: I think it is already in the record,
98 as I remember it, that he knew nothing of the matter and I do not think the Government contested the question, that he had no knowledge of it until after the Government sought to collect it at a later time.

Mr. Walsh: That is all.

The Court: Is there any cross examination?

Mr. Pester: No cross examination.

(Witness excused.)

Mr. Walsh: There will be nothing further.

The Court: All right, at 10:30 we will try to proceed. If we cannot proceed maybe we will get him by 2:00 o'clock.

Mr. Walsh: I think we can get him here.

The Court: Very well.

(Thereupon the trial of the above-entitled case was adjourned until 10:30 o'clock A.M. of the following day, October 14, 1955.)

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99 * * (Caption--No. 48 C 1926) * *

Before Judge Perry,
October 14, 1955,
10:30 o'clock A. M.

Trial resumed pursuant to adjournment.

Present: Same as before.

By The Clerk: United States v. Wainer.

The Court: Were you able to get your witnesses?

Mr. Walsh: I did reach them. I discussed the matter with myself last night, and I don't think that his testimony would add anything. His wife is dead, and your Honor indicated --

The Court: Then you will have primarily --

Mr. Walsh: No more testimony.

The Court: You will have no testimony?

Mr. Walsh: No testimony.

The Court: No more testimony. How long would you like to argue?

100 Mr. Walsh: I would like about a half an hour.

The Court: How long will you want?

Mr. Pester: I don't think I will want over ten minutes, your Honor.

Mr. Walsh: It might be, your Honor, due to the nature of the case, a discussion of the various exhibits, a brief might be a more practical way of handling it.

The Court: No. I think this is a case which will have to be decided by the higher court. They have already reversed me and told me to take this and to consider it, but they didn't tell me what to do about it. They confirmed my findings of fact but said there was a release mentioned there, and they said that unless there is a saving clause in the release, they told me what to do -- but now there is something here, but they didn't tell me what to do if there is a saving clause.

So whatever I decide here I am just a railroad station, so to speak, a place where the passengers stop and get on, on their way to the higher court. I recognize that in this particular case.

Mr. Walsh: Well, I am not sure of that situation, your Honor.

101 (A short recess was taken.)

The Court: Gentlemen, if I remember correctly, you have concluded your testimony, is that right?

Mr. Walsh: That is right.

The Court: And the Government does not wish to present any further testimony, is that correct?

Mr. Pester: That is correct, your Honor.

The Court: So that the testimony is now concluded and we are ready for arguments.

It is not an open and shut question by any means, so I am ready to hear arguments on it.

(Here followed arguments by counsel, which were not transcribed.)

(Thereupon the above-entitled case was recessed until 2:00 o'clock p.m. of the same day, October 14, 1955.)

October 14, 1955,
2:00 o'clock p.m.

Resumed pursuant to recess.
Present: Same as before.

102 By The Clerk: No. 48 C 1926, United States of America, vs. Wainer, for ruling.

The Court: Gentlemen, I have considered this matter and I am ready to make my findings orally, and direct that findings of fact and conclusion of law be presented in due course.

So the record is clear, the Court at this time adopts as a part of its findings of fact all findings of fact and likewise all conclusions of law heretofore entered by this court and that have been affirmed by our Court of Appeals.

The Court at this time, as it understands the question before it, has opened up this cause for the purpose of having presented whatever form of writing or release that may exist, for the court to make a finding of fact based thereon. The Court has heard testimony and has admitted documents presented by the Government in connection with this release, and the Court finds as a matter of fact as follows:

There is in evidence a release from the Government running to Harry Braverman, who was equally liable on the tax in question with the defendant Wainer. That release that is admitted in evidence as a single document itself does not have in it reserved to or by the Government the right to proceed against
103 Wainer, in the document so introduced.

However, there is a separate document that does have that reservation, that is presented and is before the Court as a part of the file, bearing the same date as the release; and the Court, having considered all of the evidence, finds that in the opinion of this Court the two documents must be considered together and that they together constitute the release rather than the single piece of paper and, therefore, that the Government did reserve its right in this release. The Court looks upon this release, together with all the documents that have been presented, as in the nature of a covenant not to sue, if it shall be determined that this case is to be determined by Illinois law, which has not

been so stated, as I understand it, yet. If that is the law under which it is determined, that is the finding of this Court with respect to this instrument.

On the other hand, the Court is of the opinion that this is a different type of action than it would be if the United States Government were suing under the Illinois Statute for a tort and had released one of the tort feasors. That would present a different problem than what is here presented to the Court, since the Government is suing under a federal statute to
104 enforce a tax.

I want to make my opinions, reasons and thoughts in this matter very clear so that this matter can be finally disposed of even if it has to go to the Supreme Court.

The Court specifically finds that the independent release, which I believe is represented by Government's Exhibit 28, wherein the said Harry Braverman signed it and acknowledged it, reserving the right to the Government and limiting the settlement to Harry Braverman, was done with full knowledge of Braverman and that it was done at the time of or prior to the execution of the release, and that from all the facts and circumstances was a part of the consideration; and that the Government had before it this instrument signed by Braverman and considered that as a part of the release, as a consideration for the release.

The Court has considered seriously the question raised by counsel for defendant about the testimony that was presented here, about taking the amount of taxes off of the taxing list and abating it. The Court looks at that in the same manner as if any individual had what he considered a bad debt and he might
105 mark it off of his books as a bad debt and he might even take credit for it on an income tax return and then might later find within the statute of limitations that the debt could be collected, and the fact that it did not appear on his books in the judgment of this Court would not make a bit of difference in the world. If the indebtedness still existed he could sue on it and he could recover it, and then it would be between him and the United States about making a refund on his income tax or treating it as income. That is the way

the Court looks at this. The question is, was it due, and the Court does not consider the taking of the abatement due to the fact that it was uncollectible as being a defense in any way.

That is the opinion of this Court, and judgment for the amount due will again be entered, based upon the findings of fact and conclusions of law.

When that is presented, if an appeal is desired in this matter, I will make it as easy as possible, as far as I am concerned, without a heavy bond. I will make it a bond for costs, so there will be no question about the right of appeal.

All right, that is the decision of the Court in this matter.

106 Mr. Walsh: Your Honor did not mention the regulation, or any effect, or --

The Court: It is the opinion of the Court that that regulation does not make a bit of difference in the world, even if it were offered in evidence it would not make a bit of difference as far as I am concerned, because in my judgment we are dealing with the discretion of an officer as to whether or not to execute a release; and I think even if he had had a complete policy at all times I do not consider that as part of the law. I consider that as a matter of discretion of the officer.

This may go in as a part of my opinion. I am very definitely of the opinion that the regulation, even though it had not been carried out, would make no difference.

Mr. Walsh: Is there any time fixed for the filings?

The Court: We should fix a time. Within twenty days?

Mr. Pester: Oh, yes, we will have them before that.

The Court: Well, I will not be here for two weeks, so I will fix twenty days for the filing of that. Serve counsel with a copy of it, and then as soon as that is done, why, you can arrange a time and we will have a hearing on any objections you may have, and you may file then within ten days thereafter.

Mr. Walsh: All right.

107 The Court: Twenty days to file proposed conclusions of law and findings of fact, ten days to file objections to them, and the same to be set down upon notice immediately thereafter for hearing, and we will render a decision on that and enter judgment at that time. Then we will arrange other times.

Mr. Pester: Thank you.

Mr. Walsh: Thank you.

---

108 United States District Court

* * (Caption--No. 48 C 1926) * *

I, Edward Newlander, do hereby certify that I reported the proceedings had in the above entitled case before Hon. J. Sam Perry, one of the judges of said court, on October 13 and 14, 1955; and that the foregoing is a full, true and accurate transcript of the testimony taken, and decision rendered.

Edward Newlander
Official Court Reporter
United States District Court
Northern District of Illinois

May 1, 1956.

109 GOVERNMENT'S EXHIBIT 26
Filed - Jun 8 - 1956
48 C 1926
Roy H. Johnson, Clerk

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
Washington

Oct. 7, 1952

To All To Whom These Presents Shall Come, Greeting:

I certify that the annexed is a true copy of Offer in Compromise, Form 656-C, in the amount of $5,000.00 in lieu of distilled spirits tax in the amount of $40,674.98, dated February 3, 1941, signed by Harry Braverman, Chicago, Illinois on file in this department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

D. L. Siegrist
D. L. Siegrist
Head, Audit Service Branch
Audit Division
Bureau of Internal Revenue

(SEAL)

Exhibit A(1)

D/( ) ( ) RECOMME[illegible]DATION SUBMITTED [illegible] THE COLLECTOR

RECEIVED 1941 DIST. SUP. CHICAGO, ILL.

COMMISSIONER OF INTERNAL REVENUE, Washington, D.C.:

On reverse side [illegible] Harry Braverman, 4834 North Kimball Avenue, Chicago, Illinois

In compromise of liability [illegible]

failure to pay [illegible] assessed tax

Return was filed on Form ..... for ..... (Period) on ..... (Date)

This case is (not) in suit.

RECORD OF ASSESSMENTS AND PAYMENTS

Entries in detail should be made in the appropriate columns below. The next to the last column should show by symbols "Pd.," "Ab.," or "Cr.," the nature of each entry in the preceding column and the last column should show the balance due. All questions below should be fully answered.

Kind of Assessment, Tax Penalty, Interest, and Taxable Year	List	Year	Month	Account No. on Page	Account No. on Line	Amount Assessed	Paid, Abated, or Credited Date	Paid, Abated, or Credited Amount	Pd. Ab. Cr.	Schedule No.	Balance Due
Tax on 7976. 16 Gals Spts Prod. 9/26/32 Case 3950M	PN	1933	Dec	398	7	8,773 78	12/18/36 AB-ATU 3757 F-769	8,763 78	Ab		
Tax 7542-36 PG Alc.	DS	1938	July	519	6	15,084 72	11/25/36	10 00	Pd.		
Pd.a/Abat	DS	1939	July	52	2	759 30	7/10/39	759 30	Pd.		
Tax 7413-24 PG Alc in mash	DS	1938	July	519	6	14,826 48					
Tax 1000 WG Misc DS MFGD 9-26-35.	DS	1938	July	519	6	2,000 00					
Jointly assessed with Allen M. Wainer 404 South Henderson Street Chicago, Ill.											
						41;444 28		9,533 08			31,911 20

COMPROMISE OFFER		DEMANDS ISSUED		
Amount of previous tender	$	Form 17	Date	2/27/34
		Form 21	Date	3/29/34
Amount of this tender	1000,00	Form 69	Date	4/28/34
Total amount offered	1000.00	Form 53	Date	10/27/36
		Form 69 Re	Date	5/19/39 1-12-39

Notice of lien was filed on the 11th day of October, 1935, at Chicago, Illinois

Was a bond for collection filed? 1st July 39 T.P.Cl. Fl. Abt. 8,773 78 7 6/23/39

If so, furnish copy of same. 5th December 40 Abt. Cl. Rel. Bur. Ltr. 4-27-40

Were any collection enforced? 5 If so, furnish copies December 40 Rel. AT 3498 4/29/40 OC Sub. 11/3/38 $500 Spts. Prod. 9/26/32 Sec. 900 R.A. 1926 706

Was the Revenue Agent in Charge requested to make an investigation? O.C. fld 12/7/39 773-$1500.00 O.C. Rel. per Bur Ltr. 6-4-40

I recommend* that the offer be (Accepted or rejected) for the following reasons: Rej. Ltr. sdd 6-10-40 - Rej.Sch.7565 6-17-40

Date signed March 13, 19 41

Collector ..... First ..... District of ..... Illinois

*Recommendation should always be made if report of deputy collector is forwarded with this form; if not, the collector's recommendation should be submitted with the report of the deputy collector.

16—14179 U. S. GOVERNMENT PRINTING OFFICE

112

GOVERNMENT'S EXHIBIT 27
Filed - Jun 8 - 1956
48 C 1926
Roy H. Johnson, Clerk

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
Washington

Sep 22 1955

To All To Whom These Presents Shall Come, Greeting:

I certify that the annexed is a true copy of Statement of Financial Condition and other information (Form 433), executed on February 3, 1941, and signed by Harry Braverman and Harry K. Jacols on file in this Department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

D. L. Siegrist
D. L. Siegrist
Chief, Miscellaneous Service Section
Audit Operations Branch
Audit Division
Internal Revenue Service

(SEAL)

Exhibit A(2)

113 Government's Exhibit 27 (Continued)

STATEMENT OF FINANCIAL CONDITION
AND OTHER INFORMATION
(To be filed in duplicate with offer in compromise)

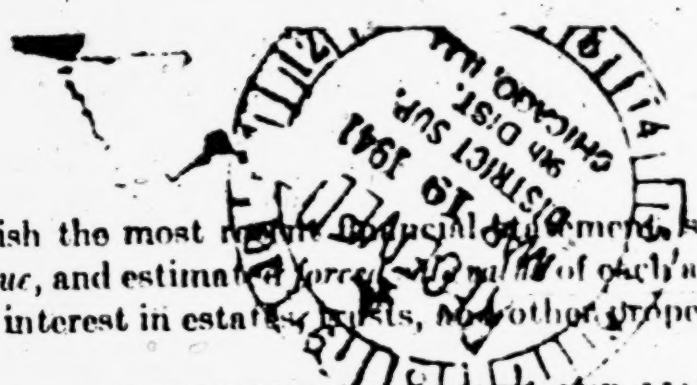
Name: Harry Braverman
Home address: 4840 North Kimball Ave.,
Business address: 3130 Central Ave.,
Home Telephone number: Keystone 8857
Business Telephone number: Pal. 2643

Under the procedure outlined in Commissioner's Mimeograph No. 3832, as amended, dated August 29, 1934, the information requested herein must be submitted with your officer in compromise. Information concerning the preparation of this statement may be had by getting in touch with a deputy collector or your attorney.

It is important that all questions be answered fully. The careful filling out of this form will expedite the consideration of your offer.

1. Description of tax, amount of liability, and amount tendered in compromise thereof:
   Kind of tax: Distilled Spirits Tax
   Amount of liability: $40,674.98
   Amount offered in compromise: $5,000
2. Name, address, and telephone number of representative (if any): None.
3. List names of banks and other financial institutions taxpayer has been doing business with at any time during the past 3 years: None.
4. State whether any other Federal taxes (not including those covered by this offer in compromise) are due and unpaid at present. Answer (yes or no): No.

114 Government's Exhibit 27 (Continued)



5. Furnish the most recent financial statement setting forth in separate columns the *book value*, *fair market value*, and estimated *forced sale value* of each asset. List *all assets* directly or indirectly owned, and disclose all interest in estates, trusts, and other property rights, whether contingent or remainder

STATEMENT OF ASSETS AND LIABILITIES AS OF Feb. 1, 1941.

Assets	Present Book Values	Fair Market Values	Forced Sale Values
Cash	$ 1,000.20	$	$
Cash surrender value of insurance [1]	2,245.00		
Accounts receivable [2]	None		None
Notes receivable [2]	None		None
Merchandise inventory [2]	None		None
Real estate [3]	None		None
Furniture and fixtures [3]	300.00		150.00
Machinery and equipment [3]	700.00		450.00
Trucks and delivery equipment [3]	None		None
Automobiles [3]	None		None
Securities [4]	None		None
Other assets below:			
Household furniture	1,000		500.00
Machinery and equipment [3]	700.00		450.00
Trucks and delivery equipment [3]	None		None
Automobiles [3]	None		None
Securities [4]	None		None
Other assets below:			
Household furniture	1,000		500.00
TOTAL ASSETS			

[1] See p. 10 for complete analysis
[2] See p. 4 for complete analysis
[3] See p. 3 for complete analysis
[4] See p. 5 for complete analysis

115 Government's Exhibit 27 (Continued)

Statement of Assets and Liabilities as of Feb. 1, 1941 (Continued)

Loans on insurance (Analysis, p. 10): None
Accounts payable to attorney Donald B. Frederick, Buhl Bldg., Detroit, Mich. Amount: $1,000.00
Notes payable: None
Mortgages (Analysis, p. 5): None
Accrued real estate taxes: None
Judgments: None
116

6. Analysis of important assets:

a. Accounts and Notes Receivable: None.
117 c. Real Estate: None.

d. Furniture and Fixtures-Machinery and Equipment:
Furniture and fixtures used in business: Cost $750.00, Forced Sale Value: $150.00
Machinery and equipment Air conditioning machinery: Cost $2,000.00, Forced Sale Value $450.00
Trucks: None
Automobiles: None
Household furniture: Cost $1,000.00, Forced Sale Value $500.00
TOTAL: Cost $3,750.00
Forced Sale Value $1100.00
118 e. Securities: None

7.a. Were joint returns filed by husband and wife? Answer (yes or no): No.
119 b. Where offer in compromise is submitted by an individual, or on behalf of an estate, furnish a complete analysis of receipts and disbursements for the past 12 months:

Receipts and Disbursements for Period 1/1/40 to 12/31/40.
Approximate Profit: 3145 Central Ave., $14,715.00
Approximate Profit: Lay-off Book, $769.10
Approximate Profit: 5306 Lawrence Ave., $1,518.58
TOTAL RECEIPTS: $17,002.68

Disbursement:
Insurance Premiums: $364.90
Automobile Expense: $480.00
Servants, wages: $624.00
Living Expenses: $5,200.00
Expense during trial 5/40, train fares & expense, contacting attorneys etc.: $1,000.00
Legal expense, attorneys fees, traveling expense for attorney printing etc.: $2,800.00
Bonding expense in Chicago and Detroit: $400.00
Expense incurred to bring sisters from Europe: $600.00
Doctors, nurses & hospital expense for mother-in-law: $500.00
Doctors, nurses & hospital expense for sister: $300.00
Donations: $300.00
Personal expense in keeping: $1,500.00
TOTAL DISBURSEMENTS: $14,068.90

120 8. If offer in compromise is submitted by a corporation, it is very important that information contained in income tax returns, as adjusted, for the past 2 years and the same information for the current period from January 1 to date be furnished as follows:
No Corporation.

121 9. Where offer is filed by a corporation, show salaries paid to principal officers for past 3 years and amounts distributed in dividends, if any, during and since the taxable years covered by this officer in compromise:
Not Incorporated.

10. Where offer is filed by an individual, submit the following information regarding yourself, wife or husband, and dependents:
Harry Braverman, Taxpayer, Age 39
Eva Braverman, Wife, Age 36
Dependent children or relatives:
1. Ferne Braverman daughter, Age 13
2. Mervl Braverman daughter, Age 10
3. Celia Braverman sister, ill up until now Age 34
4. Theresa Braverman sister, destitute Age 39

11. Give general statement regarding the prospect of an increase in the value of assets in near future and increase in present income:
See Statement attached.

122 12. Do you have any life insurance policies in force? Answer (yes or no): yes. Submit list of all life insurance policies now in force as follows:
8-401-075-S2 New York Life Insurance Co. Amount of Policy: $10,000.00, Present Cash Surrender Value: $1670.00
11,236-695-S9 New York Life Insurance Co. Amount of Policy: $5,000.00, Present Cash Surrender Value: $575.00.
13. Was right to change beneficiaries reserved by taxpayer in all insurance policies? Answer (yes or no): No. If the answer is "No," list policies in which you cannot change the beneficiaries:

Same as above

14. Are any of the insurance policies assigned or pledged on indebtedness (except insurance companies)? Answer (yes or no): No.
15. Have you disposed of any assets or property by sale, transfer, exchange, gift, or in any other manner, except by sale for full value, from 1 year prior to the taxable period involved to the present date? Answer (yes or no): No.
123 16. Have you any life interest or remainder interest, either vested or contingent in any trust or estate, or are you a beneficiary of any trust? Answer (yes or no): No.
17. Are you the grantor or donor of any trust, or the trustee or fiduciary for any trust? Answer (yes or no): No.
18. Have you any other assets, either actual or contingent, other than those listed herein? Answer (yes or not): No.
19. Are foreclosure proceedings pending at the present time on any real estate? Answer (yes or no): No.
20. Are bankruptcy or receivership proceedings pending at present time? Answer (yes or no): No.
21. If sum offered in compromise is borrowed money, state name and address of the lender and list of collateral, if any, pledged to secure the loan: money used as tender in this affair to the extent of 4,000.00 will be borrowed from my wife.

AFFIDAVIT

I, Harry Braverman, being duly sworn, depose and say that the foregoing list of assets and liabilities as of February 1, 1941, and other information submitted for consideration in connection with an offer in compromise of Federal tax liability, are true and complete in every respect and that I have no assets (either directly or indirectly owned) of any nature other than those listed as aforementioned.

Harry Braverman

Subscribed and Sworn to before me this 3rd day of Feb. 1941.
Harry K. Jacols
(SEAL)

124 GOVERNMENT'S EXHIBIT 28
Filed - Jun 8 - 1956
48 C 1926
Roy H. Johnson, Clerk

UNITEDSTATES OF AMERICA
TREASURY DEPARTMENT
Washington

May 21 1954

To All To Whom These Presents Shall Come, Greeting:

I certify that the annexed is a true copy of the Stipulation, dated and executed February 3, 1941, by one Harry Braverman, in reference to an offer in Compromise of $5,000.00 submitted by him, as required by Coll-Mimeograph, Coll. No. 4749, A.T. No. 158, dated March 25, 1938 on file in this Department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of Treasury:

D. L. Siegrist
D. L. Siegrist
Acting Chief, Miscellaneous
Services Section
Audit Operations Branch
Audit Division
Internal Revenue Service

(SEAL)

Exhibit A(3)

125 Feb. 3 1941

Coll-Mimeograph
Coll. No. 4749
A. T. No. 158

"My Liability to pay the balance of said tax, penalties and interest, remaining after deducting from the assessment the amount hereby tendered, collection of which balance shall not be enforced against me by suit or any other proceeding; it being understood that this undertaking shall not release any other person from liability under said assessment.

Harry Braverman

Subscribed and sworn to
before me this 3rd day
of February, 1941.
Percy L. Graham
Deputy Collector.
(SEAL)

126 GOVERNMENT'S EXHIBIT 29
Filed - Jun 8 - 1956
48 C 1926
Roy H. Johnson, Clerk

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
Washington

Jun 4 1954

To All To Whom These Presents Shall Come, Greeting:

I certify that the annexed is a true copy of Com-Mimeograph, Coll. No. 4749, A. T. No. 158, dated March 25, 1938, in re: Compromise of Joint Assessments of Internal Revenue Taxes Pertaining to Alcoholic Liquors on file in this Department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

D. L. Siegrist
D. L. Siegrist
Chief, Miscellaneous Service Section
Audit Operations Branch
Audit Division
Internal Revenue Service

(SEAL)

Exhibit A(4)

127 TREASURY DEPARTMENT
Office of Commissioner of Internal Revenue
Washington, D. C.

Com-Mimeograph March 25, 1938.
Coll. No. 4749
A. T. No. 158

Compromise of Joint Assessments of Internal Revenue Taxes Pertaining to Alcoholic Liquors.

Collectors of Internal Revenue,
District Supervisors,
And Other Internal Revenue Officials
And Employees Concerned:

Statement of Policy.

1. Section 1150(d), Title 26, U. S. C., 1934 Ed., reads as follows:

Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distillery, or distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom." (Section 3251, Revised Statutes.)

2. Under this statute numerous assessments are made against two or more taxpayers each of whose liability is joint and several. Heretofore, the Bureau has pursued a policy whereby the acceptance of an

offer in compromise from one of two or more taxpayers jointly and severally liable to a single assessment, disposed of the entire assessment and released all of the remaining taxpayers named therein from further liability.

3. After a further study of the statute, the conclusion has been reached that, in view of the discretion vested in the Commissioner of Internal Revenue by Section 1661(a), Title 26, U. S. C., 1934 Ed. (Section 3229, Revised Statutes), if an offer, submitted by one of two or more taxpayers named in a single assessment, is accompanied by a stipulation that it is to cover the liability of the proponent alone, such offer may be accepted in compromise of such proponent's individual liability without releasing the remaining taxpayers from liability to the assessment, less the amount of the offer.

4. Com. Mim. Coll. No. 4201 provides that tax may not be compromised except where there is substantial doubt as to the liability for or the collectibility of such tax. In order to give consideration to an offer in compromise of a taxpayer's individual liability to an assessment against two or more persons, there should be evident (1) a substantial doubt as to the proponent's liability for the tax, or (2) substantial doubt as to his ability to pay the assessment in full.

128 5. In a case where there are two or more taxpayers named in an assessment, and an offer is submitted by one of the taxpayers in compromise of his individual liability thereto, the Collector will assign a deputy collector to conduct an investigation concerning the financial condition of the taxpayer filing the offer only. Where the offer is over $100.00 and pertains to a tax of over $500.00, the Collector will request the Revenue Agent in Charge to assign a revenue agent to make a separate investigation of the taxpayer's financial condition. The report of the investigation conducted by the revenue agent will be transmitted to the Collector.

6. If an offer in compromise of an assessment against two or more persons is unaccompanied by the stipulation referred to in paragraph 3 hereof, it shall be considered as being submitted in compromise of the liability of all of the taxpayers, and, if accepted,

will release all such taxpayers. When such an offer is submitted, the Collector will assign a deputy collector to investigate the financial condition of all the taxpayers named in the assessment. Where the offer is over $100.00 and pertains to a tax of over $500.00, the Collector will request the Revenue Agent in Charge to assign a revenue agent to make a separate investigation of the financial condition of all the taxpayers. The report of the revenue agent will be transmitted to the Collector. When, during the examination, the office of the District Supervisor, of the offer and the report or reports of the deputy collector and/or the internal revenue agent, it is found that doubt exists as to collectibility of the assessment on the part of the proponent, but no doubt exists as to the collectibility of the assessment from one or all of the remaining taxpayers, the offer should be recommended for rejection, unless there is sufficient doubt as to the liability of all of the taxpayers named in the assessment to justify acceptance of the offer.

Procedure to be Followed Where An Offer is Submitted in Compromise of a Taxpayer's Individual Liability to a Joint Assessment.

7. At the time the proponent files an offer, the Collector of Internal Revenue should request him to stipulate that the offer be restricted to his personal liability to the assessment, unless the proponent evinces his intention to compromise the liability of not only himself but the other taxpayers. In the event the taxpayer agrees to confine the terms of the offer to his personal liability, the Collector of Internal Revenue should assist him in the preparation of Form 656, "Offer in Compromise," and shall see that there is inserted on Form 656, following the expression:

"$_____ is hereby tendered voluntarily, with request that it be accepted in compromise of said liability, to wit":

this stipulation:

129 "My liability to pay the balance of said tax, penalties and interest, remaining after deducting from the assessment the amount hereby tendered, collection of which balance shall not be enforced [illegible] by suit or any other proceeding; it being

understood that this undertaking shall not release any other person from liability under said assessment."

8. The offer, together with the report of the deputy collector, the report of the revenue agent, if any, and the recommendation of the Collector, will be forwarded to the proper District Supervisor in accordance with Com. Mim. Coll. No. 4336, A. T. No. 47.

9. Upon receipt of the offer from the Collector of Internal Revenue, the office of the District Supervisor will prepare the offer for appropriate action on Form 7249-K, pursuant to Com. Mim. Coll. No. 4336, A. T. No. 47, as amended by Com. Mim. Coll. No. 4671, A. T. No. 138, and forward the same to the office of the Deputy Commissioner, Alcohol Tax Unit. In preparing Form 7249-K, the office of the District Supervisor will advise fully with respect to the taxpayer's liability for the tax.

10. In the event the offer is rejected by the Commissioner of Internal Revenue, the case will be handled in accordance with present procedure.

11. In the event the offer is accepted by the Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, the office of the Deputy Commissioner, Alcohol Tax Unit, will prepare a letter to the Collector of Internal Revenue, authorizing him to eliminate the name of the proponent from the assessment list, and at the same time a similar correction will be made on the copy of the assessment list retained in that office. Form 7802, "Notice of Adjustment of Claim in Abatement," will be prepared, reducing the assessment by the amount of the offer, and forwarded to the Collector of Internal Revenue.

Disposition of the copies of Forms 7878 and 7249-K will be made in accordance with present procedure.

12. Upon receipt of Form 7802, reducing the assessment by the amount of the offer, the Collector will endeavor to collect the balance of the assessment or procure offers from the remaining taxpayers named in such assessment. In the event that he is not successful, by reason of the fact that there are no distrainable assets whereby collection can be made and he is unable to procure other offers in compromise,

the Collector will be at liberty to file a claim on Form 53, "Collector's Claim for Uncollectible Taxes," for the abatement of the uncollectible balance thus remaining.

13. The office of the District Supervisor, upon receipt of notice of acceptance of the offer, will prepare a letter to the proponent, advising of the action taken thereon. The letter will read as follows:

130 Reference is made to the assessment of $_____ against you and other persons appearing on the _____ Distilled Spirits List, Page ____, Line ____, of the Collector of Internal Revenue at _____, plus penalty and interest.

You are advised that your offer of $_____ in this case has been accepted by the Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, in accordance with the terms thereof which terms are as follows:

"$_____ is hereby tendered voluntarily, with request that it be accepted in compromise of said liability, to wit: my liability to pay the balance of said tax, penalties and interest, remaining after deducting from the assessment the amount hereby tendered, collection of which balance shall not be enforced against me by suit or any other proceeding; it being understood that this undertaking shall not release any other person from liability under said assessment."

The acceptance of this offer does not release the other persons from liability to the payment of this assessment.

Respectfully,

Stewart Berkshire,
Deputy Commissioner.

BY: _____
District Supervisor.

14. Paragraphs 2, 4 and 5 of A. T. Circular No. 235, dated November 23, 1936, are hereby revoked.

15. Correspondence in regard to this mimeograph should refer to the number thereof and to the symbols AT:T.

Guy T. Helvering,
Commissioner.

131 GOVERNMENT'S EXHIBIT 30
Filed - Jun 8 - 1956
48 C 1926
Roy H. Johnson, Clerk

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
Washington

Oct. 7 1952

To All To Whom These Presents Shall Come, Greeting:

I certify that the annexed is a true copy of Abstract and Statement, dated June 18, 1941 (with Statement of Facts, letter to Collector of Internal Revenue at Chicago, dated December 30, 1941, and schedule of Acceptance of offer attached), signed by W. H. Kennedy, Deputy Commissioner, Alcohol Tax Unit, in re: Offer in Compromise of Harry Braverman, Chicago, Illinois, on file in this Department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

D. L. Siegrist
D. L. Siegrist
Head, Audit Service Branch
Audit Division
Bureau of Internal Revenue

(SEAL)

Exhibit A(5)

132

TREASURY DEPARTMENT
Bureau of Internal Revenue
Alcohol Tax Unit
Washington, D. C.

June 18, 1941.
Case 3950-M

In Re Offer in Compromise Of:) Amount of Offer:
5272) $5,000.00
) Serial No. 443
Harry Braverman,)
4834 North Kimball Ave.) Collection District:
Chicago, Illinois.) 1st Illinois
) Not In Suit

(Marginal Note: O.C.Rej. 7540 - 5/20 - 40 Amt. $1500.00; O.C.Rej. 6427 - 5/8 - 39 - Amt. $500.00; O.C.Rej. 6988 - 10/5 - 39 Amt. $1,000.00
See inside Sheet.)

CHARGE: Liability for the payment of two assessments, one in the amount of $31,911.20, appearing on the Distilled Spirits List of the Collector of Internal Revenue at Chicago, Illinois, the other in the amount of $8,763.78, appearing on the Prohibition-Narcotic List of the Collector of Internal Revenue at Chicago, Illinois, as follows:

Persons Assessed	Recommended By	Year
Harry Braverman Allen M. Wainer	A.T.U.	1938
Harry Braverman Alias Leo J. Glasser 4834 N. Kimball Ave. Chicago, Ill.	Prohibition Unit	1933

(Marginal Note: A 147626 Uncl 79348 -)

Month	Page	Line	Amount Assessed	Balance Due
July	519	6	$31,911.20	$31,911.20
Dec.	398	7	8,773.78	
	Paid 11/25/36		10.00	
				8,763.78
Total of two assessments				$40,674.98

Date And Place of Violation:
Place of Violation: Riley farm, near Joliet, Ill.
Date of Violation: September 26, 1935.
Investigation Commenced: July, 1935.
Investigation Concluded: May 11, 1936.

To the Commissioner of Internal Revenue:

I have considered the proposition to compromise the liability as charged herein, and for the reasons embodied in the above abstract and statement, am of the opinion that it will be for the best interests of the United States to accept the terms proposed.

Sep 12 1941
To the Commissioner of Internal Revenue:
I recommend the acceptance of this offer.

W. H. Kennedy
Deputy Commissioner,
Alcohol Tax Unit.

133 Harry Braverman, Serial No. 443.
4834 North Kimball Avenue
Chicago, Illinois.

STATEMENT OF FACTS:

On September 26, 1935, a large illicit distillery was seized on the Riley farm near Joliet, Illinois, with 60,400 gallons of mash and 5,060 gallons of alcohol. The seizure was effected principally by tracing large sugar shipments. A thorough investigation was then conducted by five investigators, who devoted practically their entire time to the case for about four months, beginning in the latter part of September, 1935.

Evidence in the case report implicated Harry Braverman and Allen M. Wainer as the principals in a conspiracy, which involved eighty persons, and which, among other things, revealed the purchase and transportation to the illicit distillery or large quantities of sugar and other raw materials; the renting of garage space for storage of trucks and mechanical equipment and supplies necessary in the operation of the distillery; the purchase of large quantities of five-

gallon alcohol cans from the American Can Company, as well as the seizure of a number of automobiles loaded with alcohol and distillery equipment.

In view of the evidence amassed against Harry Braverman and Allen M. Wainer, it is believed that no credence should be given to the statement by Harry Braverman, attached to Form 656-C, wherein he disclaims any interest in the operation of the illicit distillery in question.

ASSESSMENT ITEMIZED:

1. Tax on 7542.36 p.g.alc.	$2.00 p.g	$15,084.72
Tax on 7413.24 p.g.alc. in mash	2.00 "	14,826.48
Tax on 1,000 w.g.misc. dist. spts.	2.00 w.g	2,000.00
Total of one assessment		$31,911.20
2. Tax on 7976.16 p.g.d.s.	$1.10 p.g. $8,773.78	
Pd. 11/25/36	10.00	
Balance due		8,763.78

DISPOSITION OF CRIMINAL CASE:

Harry Braverman was sentenced on April 19, 1938, to four months in jail and fined $500.00; stay of execution granted until May 19, 1938, bond to 134 stand; defendant given leave to file application for probation within five days. On May 2, 1938, application for probation allowed and sentence heretofore entered vacated and set aside. Imposition of sentence suspended and defendant placed on probation for a period of three years. Case closed.

FINANCIAL RESPONSIBILITY:

ASSETS
(a) Real Propery None
(b) Personal Property
Cash on hand - $1,000.00.

Furniture and Fixtures which have a present book value of $300.00 and forced sale value of $150.00 (used in connection with proponent's business); household furniture, which cost $1,000.00, and which has a forced sale value of $500.00; an air conditioning machine which cost $2,000.00 and which has a forced sale value of $450.00

(c) Life Insurance.

Proponent has a $10,000.00 life insurance policy with the New York Life Insurance Company, which has a present cash surrender value of $1,670.00. He also has a $5,000.00 insurance policy with the same company which has a present cash surrender value of $575.00.

Form 433, attached to a previous offer, indicated a loan of $2,200.00 against these policies. This indebtedness appears to have been satisfied since it is not listed on the attached Form 433.

LIABILITIES

Proponent indicates, on Form 433, as accounts payable, the amount of $1,000.00, which he owes Donald B. Frederick, an attorney in Detroit, Michigan.

135 During the calendar year 1940, the proponent states that he received an income amounting to $17,002.68, derived from illegal establishments engaged in accepting wagers on race horses at the following addresses in Chicago: 3145 Central Avenue and 5306 Lawrence Avenue. During the same period his disbursements amounted to $14,068.90, itemized as follows:

Insurance premiums: $364.90; Automobile expense: $480.00; Servants, wages: $624.00; Living expenses: $5,200.00; Expense during trial (May, 1940), train fares and expenses contacting attorneys, etc.: $1,000.00; Legal expense, attorneys fees, traveling expense for attorney, printing, etc.: $2,800.00; Bonding expense in Chicago and Detroit: $400.00; Expense incurred to bring sisters from Europe: $600.00; Doctors, nurses and hospital expense for mother-in-law: $500.00; Doctors, nurses and hospital expense for sister: $300.00; Donations: $300.00; Personal

expense in keeping: $1,500.00
TOTAL: $14,068.90

The proponent has his wife, two children, two sisters and his mother-in-law dependent upon him for support.

FINANCIAL RESPONSIBILITY AS SHOWN BY THE CASE REPORT:

Harry Braverman owned the Chrysler Sedan which was seized in connection with the investigation of this case and which was valued at $450.00. He is reputed to own the residence he occupies with his family at 4834 North Kimball Avenue, Chicago, Illinois. He keeps his assets concealed because of a $10,000.00 distraint warrant in the hands of the Collector at Chicago, Illinois, against any accounts which he might have.

136 PREVIOUS CRIMINAL RECORD:

Harry Braverman was summoned before the federal grand jury in connection with a large illicit distillery seized at Chicago, Illinois, during October, 1932, but was not indicted at that time.

OFFER IN COMPROMISE:

The proponent has submitted $5,000.00 (deferred payment plan) in compromise of the assessment in the amount of $40,674.98, the sum of $1,000.00 accompanying the offer, the balance of $4,000.00 to be paid at the rate of $200.00 a month for the first six months from the date the offer was signed; and $2,800.00 at the rate of $466.66 until paid. This compromise is for proponent's individual liability, such proposition being in the form of the stipulation prescribed by Com. Mim., Coll. No. 4749, A. T. No. 158, dated March 25, 1938.

On October 27, 1938, proponent submitted $500.00 in compromise of two assessments in the aggregate of $72,270.94 (Cases 3950-M and 3998-M). The assessment asserted in Case 3998-M was in the amount of $30,847.61 and appears on the August 1938 Distilled

Spirits List, Page 408, Line 0, of the Collector of Internal Revenue, Chicago, Illinois. This assessment was transferred from the November 1935 Distilled Spirits List, Page 524, Lines 1-9, of the Collector at Milwaukee, Wisconsin. The offer was rejected on May 8, 1939, on Schedule No. 6427. A claim for abatement of this assessment, filed by Harry Braverman, was allowed in accordance with Bureau letter dated September 28, 1939.

On June 20, 1939, proponent submitted an offer of $1,000.00 in compromise of the tax assessed in Case 3950-M. This offer was rejected on October 5, 1939, on Schedule No. 6988.

On November 1, 1939, proponent submitted an offer of $1,500.00 in compromise of the tax assessed in Case 3950-M. This offer was rejected on May 20, 1940, on Schedule No. 7565.

137 RECOMMENDATION OF COLLECTOR OF INTERNAL REVENUE:

The Deputy Collector recommends that this offer be accepted.

RECOMMENDATION OF DISTRICT SUPERVISOR:

Collection of this tax has been pending since 1938, and inasmuch as proponent apparently has no distrainable assets from which a larger amount than that submitted in this offer can be collected, it is recommended that this offer in compromise be accepted.

RECOMMENDATION OF DEPUTY COMMISSIONER:

The two assessments which are sought to be compromised were recommended by the Alcohol Tax Unit, and the Prohibition Unit, Department of Justice, as indicated below:

Persons Assessed	Recommended by	Year	Month
Harry Braverman Allen M. Wainer	A. T. Unit	1938	July
Harry Braverman Alias Leo J. Glasser	Prohibition Unit	1933	Dec.

Page	Line	Amount Assessed	Balance Due
519	6	$31,911.20	$31,911.20
398	8	8,773.78	
	Paid 11/25/36	10.00	
			8,763.78
	Total of two assessments		$40,674.98

The Bond and Spirits Division, Department of Justice, in letter of August 20, 1941, recommended acceptance of the offer of $5,000.00 in so far as it relates to the assessment of $8,773.78, recommended by the Prohibition Unit, with the understanding that a part of the offer of $5,000.00, computed on a pro rata basis, will be allocated to the assessment of $8,763.78. This office recommends acceptance of the instant offer submitted by Harry Braverman in compromise of his individual liability to the payment of both assessments, for the reasons advanced by the District Supervisor.

138 The acceptance of this offer will result in the abatement of the assessment of $8,773.78 and the removal of the name of Harry Braverman from the joint assessment of $31,911.20.

139 AT:T:EJM Dec. 30 1941

Collector of Internal Revenue,
Chicago, Illinois

Reference is made to the assessment of $8,763.78 against Harry Braverman, alias Leo J. Glasser, 4834 North Kimball Avenue, Chicago, Illinois appearing on your December 1933, Miscellaneous Tax List, page 398, line 7, and to the assessment of $31,911.20 against Harry Braverman, 4834 North Kimball Avenue.

1938, Distilled Spirits List, page 519, line 6.

With the approval of the Secretary of the Treasury an offer in the amount of $5,000.00, submitted by Harry Braverman, was accepted on September 12, 1941, in compromise of his liability only to these two assessments.

A Form 7802 will be prepared for the entire amount of the assessment of $8,763.78, appearing on your December 1933, Miscellaneous Tax List, page 298, line 7, for the reason that Harry Braverman, alias Leo J. Glasser, is the only taxpayer named in this assessment.

Since the assessment of $31,911.20, appearing on your July 1938, Distilled Spirits List, page 519, line 6, names Harry Braverman, and one other person, you are hereby authorized to eliminate the name of Harry Braverman only from the assessment list. The copy of the assessment list on file in this office has been posted accordingly.

A Form 7802, reducing the assessment on your July 1938, Distilled Spirits List, page 519, line 6, from $31,911.20 to $27,988.50 (the pro rata share of the $5,000.00 offer), is in the course of preparation and will be scheduled to you within the near future.

(signed) Norman D. Cann
Acting Commissioner.

gg

140 TREASURY DEPARTMENT
Washington

Office Of
Commissioner of Internal Revenue
AT:T:EJM:1909
To The Honorable
The Secretary of the Treasury
Sir:

I have the honor to submit for your consideration the following schedule of compromise cases and ask your approval of my decision in accepting the terms of compromise as advised by the Chief Counsel, Bureau of Internal Revenue, whose opinion is attached to the accompanying brief.

CASES NOT IN SUIT

Case No. 443
Name of Proponent: Harry Braverman 1st-Illinois 5272
Amount Accepted: $5,000.00 ($1000.00 paid; bal. of $4000.00 payable $200.00 per mo. for 6 months; bal. of $2800.00 payable at rate of $466.66 until paid).
TOTAL AMOUNT: $5,000.00
Total number of cases: 1

9-9-41
gg

Respectfully,
Guy T. Helvering
Commissioner

Treasury Department
Office of the Secretary
Sep 12 1941
Approved

John L. Sullivan
Acting Secretary

141

GOVERNMENT'S EXHIBIT 31
Filed - Jun 8 - 1956
48 C 1926
Roy H. Johnson, Clerk

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
Washington

Sep 23 1955

To All To Whom These Presents Shall Come, Greeting:

I certify that the annexed are true copies of carbon copies of two letters dated September 22, 1941, in re: Harry Braverman, one addressed to District Supervisor, Chicago, Illinois, showing stamped signature of Stewart Berkshire, Deputy Commissioner, and one addressed to Collector of Internal Revenue, Chicago, Illinois, showing stamped signature of Guy T. Helvering, Commission, on file in this Department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

D. L. Siegrist
D. L. Siegrist
Chief, Miscellaneous Service Section
Audit Operations Branch
Audit Division
Internal Bureau Service

(SEAL)

Exhibit A(6)

142 AT:T:EJM Sep 22 1941

(Stamp--Received In Sep 22 1955-Chief Counsel's Office for the Internal Revenue Service)

District Supervisor,
Chicago, Illinois

Reference is made to the enclosed copy of Form 7249-K, "Abstract and Statement", covering an offer in compromise (deferred installment payments), Serial No. 443, in the amount of $5,000.00, submitted by Harry Braverman, 4834 North Kimball Avenue, Chicago, Illinois, which was accepted under date of September 12, 1941.

You are instructed to notify the proponent that the offer has been accepted subject to the terms thereof, in accordance with the provisions of Paragraph 98 of the Manual of Procedure for the Handling of Offers in Compromise, etc.

(Signed) Stewart Berkshire
Stewart Berkshire,
Deputy Commissioner.

Encl. No. 1467
gg

143 AT:T:EJM Sep 22 1941

Collector of Internal Revenue,
Chicago, Illinois.

Reference is made to an offer (deferred installment payments) in the amount of $5,000.00 ($1,000.00 of which was tendered with the offer), Serial No. 443, submitted by Harry Braverman, 4834 North Kimball Avenue, Chicago, Illinois, in compromise of his liability to the payment of the assessments of $40,-674.98, which appear on your July 1938, Distilled Spirits List, page 519, line 6, and your December 1933, Miscellaneous Tax List, page 398, line 7.

The offer was accepted by this Bureau under date of September 12, 1941. Form 7878, "Schedule of Accepted Offers in Compromise," will be mailed to you upon receipt of notification of completion of payment of the entire amount of the offer. You should also advise the amount of interest collected on the deferred payments, and whether such amount has been deposited in your special deposit account.

(Signed) Guy T. Helvering
Commissioner.

gg

144 GOVERNMENT'S EXHIBIT 32
FILED Jun 8 - 1956
48 C 1926
Roy H. Johnson, Clerk

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
Washington

Sep 23 1955

To All To Whom These Presents Shall Come, Greeting:

I certify that the annexed is a true copy of Schedule of Accepted Offers in Compromise (Form 7878), showing the acceptance of the offer in compromise of Harry Braverman, in the sum of $5,125.90 (interest in the amount of $125.90, included) on file in this

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

D. L. Siegrist
D. L. Siegrist
Chief, Miscellaneous Service Section
Audit Operations Branch
Audit Division
Internal Revenue Service

(SEAL)

Exhibit A(7)

145 SCHEDULE OF ACCEPTED OFFERS IN COMPROMISE

Form No. 7878
Treasury Department
Internal Revenue Bureau
Approved by the Comptroller General U. S.
Mar. 27, 1925

Schedule No. 5272
Page No. 1
Number of Page 1
Number of Items 1
Total Amt. $5,125.90
Check No._____
covering total of this Schedule.

Collector of Internal Revenue
Chicago, Illinois
Unit Alcohol Tax

The following offers in compromise (Form 656) have been examined and accepted as of the respective dates opposite each item below. You are authorized to withdraw the respective amounts from your special deposit account and deposit same as internal revenue collections, in accordance with the provisions of Section 3971 (b) of the Internal Revenue Code. By direction of the Commissioner of Internal Revenue:

(Signed) Stewart Berkshire
Deputy Commissioner.

Date Dec 15 1941
Number of Item: 1
Date of Acceptance: Sep. 12 1941
Collector's Serial Number on Document: 443

Name of Person Whose Liability Has Been Compromised: Harry Braverman, 4840 North Kimball Avenue, Chicago, Illinois
Amount: $5,125.90
(Note: Interest in the amount of $125.90 included)

146 GOVERNMENT'S EXHIBIT 33
Filed - Jun 8 - 1956
48 C 1926
Roy H. Johnson, Clerk

CERTIFICATION

I, William N. Woodruff, Acting Assistant Regional Commissioner, Alcohol and Tobacco Tax, Internal Revenue Service, Chicago, Illinois do certify that I am custodian of the records for this office, and that the attached document is a true and correct copy of a letter contained in the files of such office. This letter, addressed to Mr. Harry Braverman, is dated December 22, 1941 and signed by E. C. Yellowley, District Supervisor, for and on behalf of Stewart J. Berkshire, Deputy Commissioner of Internal Revenue.

Wm. N. Woodruff
Wm. N. Woddruff

William N. Woodruff, who signed the above certification in my presence, is personally known to me and is the Acting Assistant Regional Commissioner, Alcohol and Tobacco Tax, Chicago Region.

Arthur A. Pope
Arthur A. Pope
Notary Public

Dated at Chicago, Illinois
this 26th day of April, 1954.
(SEAL)
My Commission expires on Sep 22 1957

Exhibit A(8)

Government's Exhibit 33

147

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
ALCOHOL TAX UNIT
Chicago, Ill.

December 22, 1941

P:I:FAS

Mr. Harry Braverman
4840 North Kimball Avenue
Chicago, Illinois

Dear Sir:

Serial No. 443 Schedule No. 5272
Amount $5,000.00 Case 3950-M

Liability for the payment of an assessment aggregating $31,911.20, which appears on the Distilled Spirits List of the Collector of Internal Revenue at Chicago, Illinois.

Date of Acceptance September 12, 1941

The Commissioner of Internal Revenue has considered your offer in compromise, as identified in the caption hereof, and has decided, with the advice and consent of the Secretary of the Treasury, to close the case by acceptance of the same in accordance with the terms thereof.

Since the above amount has been paid, the case is closed and no further action on your part is necessary.

Respectfully,
Stewart J. Berkshire,
Deputy Commissioner of
Internal Revenue,
E. C. Yellowley,
By: E. C. Yellowley,
District Supervisor.

bjv
(9-7)
FAS A.H.H. R?? D

148 GOVERNMENT'S EXHIBIT 34

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
Washington

Sep 22 1955

To All To Whom These Presents Shall Come, Greeting:

I certify that the annexed is a true copy of Statement of Facts, signed by Harry Braverman on file in this Department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

D. L. Siegrist
D. L. Siegrist
Chief, Miscellaneous Service Section
Audit Operations Branch
Audit Division
Internal Revenue Service

(SEAL)

149 STATEMENT OF FACTS

From the time that I received the first notice of this tax assessment from your office, I have never had sufficient funds to pay this liability.

The following paragraph was included in the copy of statement of facts which accompanied my previous offer in compromise.

"The item of December 1933, for $8,773.78 has been made the subject of a Claim for Abatement, filed on June 20, 1939. The same has been determined by the Department and is alleged against the taxpayer, all of which the taxpayer had no knowledge of as to his connection with the manufacture of distilled spirits. He had other business with some of the individuals whose names had appeared in connection with these

assessed this tax. The taxpayer had no knowledge of, as well as no, part in any transactions that this tax is based upon. Further: because of the fact that he was likewise exonerated from any implication in the picture, he asks that this be stricken from the records and moves that this abatement claim be asserted."

Altho my tax returns for the last several years show a profit from my business, there are certain facts which must be brought out here. There are certain obligations that must be met in the course of operating this type of a business. I am unable to pay this tax and prospects for the future in my business does not look very promising, in fact they are very poor because I do not know how long I will be allowed to operate. Being in this type of business I have been tempted to gamble quite a bit, and my losses have been quite steep, but cannot be shown in my tax reports.

For the last five years I have been burdened with lawyers and legal expense in trying to get out of trouble on these government cases. Most of this expense was not listed in my income reports, because I was advised that no allowance can be made for such expenditures. And now, to make things worse for me (while I am still under probation from my previous trial), I was indicted and tried on this new charge and given an eight year sentence which I am appealing. This hearing will not be held for several months to come and besides the $1,000 which I have listed as owing to my attorney, there will be more money paid out by me before I am through. I have already hired three more attorneys to help in my defense in the Appelate court and have no idea how much that will be, because they will not make a definite agreement with me until they check the record, which is very long, thoroughly.

For the last three years I have been attempting to settle this claim with your department and I realize now that I have been ill advised by not coming directly to your office. If I had done that I would have saved myself a lot of unnecessary grief and money.

I have had a tremendous responsibility for years with most of my relatives who are in Europe and who I have been helping financially for years, especially my two unmarried sisters who I have been wholly supporting

there until last May, when my wife and myself finally succeeded in bringing them here to this country. So far, they have been dependent upon me here too.

I pray that the Commissioner will take into consideration all of the foregoing facts, and also the fact that my wife is consenting to help me financially in settling this claim, so that in the event the Appelate court rules unfavorably against me, I will not have this claim to burden me or my wife.

Harry Braverman
Harry Braverman

150 And afterwards on, to wit, the 28th day of November, 1955 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Objections To Findings Of Fact and Conclusions Of Law, in words and figures following, to wit:

151 In The United States District Court

* * (Caption--No. 48 C 1926) * *

OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

The defendant, Allen M. Wainer, by his attorney, Maurice J. Walsh, submits the following objections to the proposed findings of fact and conclusions of law, with regard to the following numbered items, as they appear in the Government's proposals:

FINDINGS OF FACT

XIII

The record does not show proof that all documents executed by the United States, officials and agents, and by Harry Braverman have been produced or are in evidence, or have been accounted for.

VIX

The statement of facts referred to in Form 656-C is not in evidence.

XV

There is no proof that the statement referred to therein was in conjunction with Form 656-C.

152 CONCLUSIONS OF LAW

VI

The release of Harry Braverman should have been in accordance with lawful regulations and directives, and the document constituting the release does not conform to the regulations and directives, and is not in such form as prescribed for the reservation of any rights against Allen Wainer, the joint and several co-assessee.

VII

No proof of Braverman's full knowledge, or of execution on any date by Braverman, was proved, except by inference, and inference will not support the conclusion urged.

VIII

The conclusion of law urged under this number is not consistent with the document of release issued to Braverman, because said document does not make any reservation of rights against Wainer and merely refers to the offer in compromise, which was contained in Form 656-C.

IX

The document relied upon does not, by its terms, justify the conclusion that it is a covenant not to sue Braverman.

153

XI

The judgment proposed would grant judgment for interest not accrued, in that any credit of the $5,000.00 should be against the principal amount of the assessment and not against mere interest.

Respectfully submitted,
Maurice J. Walsh
Maurice J. Walsh, Attorney
Defendant, Allen M. Wainer

Objections overruled in so far as they are inconsistent with the findings of fact and conclusions of law herein.

J. S. Perry

Jan. 16, 1955.

154 And afterwards, to wit, on the 5th day of December, 1955 being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entry, to wit:

155 In The United States District Court

* * (Caption--No. 48 C 1926) * *

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This is a suit filed by the United States of America in which it seeks to recover from Allen M. Wainer, distilled spirits taxes assessed against him. The case was tried on April 1 and 2, 1952, and the Court having heard the evidence offered by both parties, being fully advised in the matter and having rendered its opinion, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

The United States of America, plaintiff, herein is a sovereign and body politic.

II.

The defendant, Allen M. Wainer resides at 918 Winona Avenue, Chicago, Illinois within the jurisdiction of this Court.

III.

This suit was brought upon authorization of, and sanctioned by, the Commissioner of Internal
156 Revenue and was commenced at the direction of the Attorney General of the United States.

IV.

On or about November 26, 1935, Alcohol Tax Unit Investigators seized an illicit and unregistered distillery on what is known as the Riley farm in Wills County, Illinois about six miles from Joliet. The seizure included 69,400 gallons of mash, 3,650 gallons of alcohol in vats and 560 gallons of alcohol in cans, all of which was non-tax paid and 1730 gallons of non-tax paid alcohol was seized from a truck, on or

about September 20, 1935.

V.

At the November term of this Court in 1936 an indictment was returned against Allen M. Wainer, the defendant herein, and others in which they were charged with the illegal possession and operation of an unregistered distillery, carrying on the business of a distiller of spirits, the production of distilled spirits and the evasion of Internal Revenue taxes due thereon and the illegal transportation of 1730 gallons of non-tax paid alcohol. To all of those charges the defendant Allen M. Wainer on April 21, 1936 entered a plea of guilty.

VI.

On or about August 23, 1938 the Commissioner of Internal Revenue assessed taxes against Allen M. Wainer and Harry Braverman at the rate of $2.00 per proof gallon on 7542.36 proof gallons of alcohol, 7413.24 proof gallons of alcohol in mash manufactured and 1000 wine gallons of miscellaneous distilled
157 spirits produced at said unregistered distiller.

This said assessment appears on the books of the Collector of Internal Revenue for the First Illinois District on the July 1938 Distilled Spirits List at line 6 on page 519.

VII.

Notices and demands for payment were made upon Allen M. Wainer, the defendant and Allen M. Wainer signed collection waivers extending the time within which collection could be made or a proceeding in Court begun under the Illinois assessment as set out in paragraph VI hereof, on July 26, 1944 extending the time to December 31, 1947 and on August 25, 1947 extending the time to December 31, 1950.

VIII.

On or about December 28, 1935 the Commissioner of Internal Revenue assessed taxes against Allen M. Wainer and others at $2.00 per proof gallon on 7320 gallons of alcohol, 11,897.37 proof gallons of alcohol in mash and on 962.5 proof gallons of miscellaneous distilled spirits seized on September 6, 1935 in Wisconsin. This said assessment appears on the November 1935 Distilled Spirits List in the Collection District of Wisconsin. This said assessment was transferred to the Collection District First Illinois

and appears on the August 1938, Distilled Spirits List at line 0, page 408 in the First Illinois District.

IX.

Notices and demands for payment were made upon Allen M. Wainer and he signed collection waivers extending the time within which collection could be made or a proceeding in Court begun under the Wisconsin assessment as set out in paragraph VIII hereof, on August 12, 1941 extending the time to December 31, 1945 and on September 19, 1945 extending the time to December 31, 1948.

X.

The complaint in this case was filed on December 28, 1948.

158

XI.

The defendant denied that he at any time manufactured distilled spirits in Wisconsin and also testified that he at no time held a proprietory interest in any distillery.

XII.

On or about July 8, 1940 an offer in the sum of $5,000.00 was accepted from Harry Braverman in compromise of his tax liability on the Illinois assessment and $5,000.00 must be credited to the Illinois assessment by reason of the compromise. It also appears that $3,922.70 was allowed as a credit as alleged in the plaintiff's seconded amended complaint.

CONCLUSIONS OF LAW

I.

This suit was timely filed and the Court has jurisdiction over the parties and over the subject of the action.

II.

The evidence offered at the trial is not sufficient to connect Allen M. Wainer with the manufacture of the distilled spirits upon which the Wisconsin assessment was made and on that part of the suit, the Court finds for the defendant.

III.

The assessment for taxes made by the Commissioner of Internal Revenue on the distilled spirits seized at the unregistered distillery in Wills County, Illinois is sustained by competent and substantial evidence.

IV.

The defendant, Allen M. Weiner had a proprietory interest in the illicit and unregistered distillery which was seized in Wills County, Illinois on or about September 26, 1935 and he is liable for the taxes on the distilled spirits assessed as found in paragraph VI. of these Findings of Fact.

159 V.

A credit of $5,000.00, the amount of the offer in compromise accepted from Harry Braverman must be allowed on the assessment as of July 8, 1940.

VI.

Judgment shall be entered in this cause for the plaintiff against the defendant for the sum of $27,988.50, the amount sued for in the second amended complaint together with interest less $5,000.00 to be credited as of July 8, 1940.

J. S. Perry
Dec. 5, 1952 United States District Judge

160 And afterwards, to wit, on the 16th day of January, 1956 being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entries, to wit:

161 United States District Court

* * (Caption--No. 48 C 1926) * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court of Appeals on March 31, 1954 reversed the judgment heretofore entered and remanded this cause to permit the defendant to amend his answer by pleading the release of liability and for further proceedings. The defendant having filed his First Amendment to Answer and the plaintiff having filed its reply to the First Amendment to Answer, the cause, on October 13, 1955 came on for trial on the issue joined by the First Amendment to the Answer and the reply thereto. The Court after hearing the evidence and

argument of counsel and rendering its opinion on the said issue, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

XII

The Court finds that the Court of Appeals in its opinion rendered March 31, 1954 affirmed findings of fact numbered I through XI as entered by this Court on December 5, 1952 and those findings are adopted by the Court at this time and are made a part of these findings of fact.

162

XIII

The Court finds that the Government has offered in evidence written instruments and documents which were executed by its agents and officials and by Harry Braverman in connection with the offer in compromise submitted by Harry Braverman on February 3, 1941 and its acceptance by the Government whereby Harry Braverman was released from further payments on the assessment made against Allen M. Wainer and Harry Braverman jointly and severally.

XIV

Harry Braverman on February 3, 1941 submitted a $5,000 offer in compromise on Form 656-C together with a statement of facts and a financial statement both of which are referred to in the offer and are in evidence.

XV

On February 3, 1941 Harry Braverman executed a statement and filed it with the Collector of Internal Revenue in conjunction with the offer submitted on Form 656-C in which he stated that the balance of the tax penalties and interest remaining, after the amount of the offer, which was in the sum of $5,000, was deducted from the assessment, should not be enforced against him by suit or any other proceeding.

XVI

The abstract and statement which records the action taken by the Commissioner of Internal Revenue shows that in considering and concluding to accept the offer in compromise of Harry Braverman he had before him the statement of Harry Braverman dated Feb-

163 ruary 3, 1941 and it was considered as a part of the terms of the offer in conjunction with the

Form 656-C and the offer was accepted with the provision that the name of Harry Braverman would be removed from the $31,911.20 assessment made against him and Allen M. Wainer.

XVII

While this Court is bound by the facts and the law, the equities of this cause appeal to the Court's conscience. This result opens the door for one taxpayer to shift inequitably his share of tax to a co-obligor without notice and without the right of judicial review of the ability of all joint obligors to pay their respective shares.

CONCLUSIONS OF LAW

V

The Court finds that the Court of Appeals in its opinion rendered March 31, 1954 affirmed conclusions of law I to IV, inclusive as made and entered by this Court on December 5, 1952 and those conclusions are adopted by the Court at this time and are made a part of these conclusions of law.

VI

The release of Harry Braverman from further liability on the assessment is not found in a single instrument but is made up of several different instruments which constitute the offer and its conditions and the terms of the Government's acceptance.

VII

The statement signed and acknowledged by Harry Braverman on February 3, 1941 was made and executed by Braverman with full knowledge on or before that date and filed as a part of his offer for the purpose of reserving to the Government the right to proceed against Allen M. Wainer for recovery of the balance due on the assessment, and for releasing Braverman only from the assessment and that was a part of the consideration of the release.

164

VIII

The release given to Harry Braverman shown by its language that the Government and Braverman intended that the release should not operate as to Wainer's liability and the Government did reserve its right to proceed against Allen M. Wainer on the assessment after crediting the assessment with $5,000, the amount paid under the terms of the offer.

IX

A credit of $5,000, the amount paid on the offer in compromise must be allowed on the assessment as of September 21, 1941, the date the offer was accepted. In addition, $3,922.70 was credited to the assessment on January 15, 1942 as alleged in plaintiff's second amended complaint.

X

Judgment shall be entered in this cause for the plaintiff against the defendant for the sum of $48,604.15.

J. S. Perry
United States District Judge

January 16, 1955
DSL:sl

165 In The United States District Court

* * (Caption--No. 48 C 1926) * *

JUDGMENT

Pursuant to the order of the United States Court of Appeals for the Seventh Circuit, dated March 31, 1954, which order reversed the order heretofore entered, and remanded this cause to permit the defendant to amend his answer by pleading a release of liability and for further proceedings, the above cause came on for trial on October 13, 1955, without a jury. After hearing the evidence and arguments of counsel, the Court rendered its opinion on the said issue, and having entered its findings of fact and conclusions of law,

It Is Hereby Ordered and Adjudged that the plaintiff, the United States of America, have and recover a money judgment against the defendant, Allen M. Wainer, in the sum of $48,604.15 plus interest on said
16 judgment from this date of entry until it is paid as provided by law, and with plaintiff's costs in this action expended.

ENTER: J. S. Perry
Judge

Jan. 16, 1956
DSL:NC

167 And afterwards on, to wit, the 14th day of March, 1956 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Notice of Appeal (Clerk's Certificate Of Mailing Attached Thereto) in words and figures following, to wit:

168 In The United States District Court
For The Northern District Of Illinois
Eastern Division

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	No. 48 C 1926
ALLEN M. WAINER Defendant.	)	

NOTICE OF APPEAL

TO: Hon. Robert Tieken,
United States Attorney,
Attorney for Plaintiff,
Room 450 United States Court House
Chicago, Illinois

Notice is hereby given that Allen M. Wainer hereby appeals from the judgment entered herein on January 16, 1956, in favor of the Plaintiff and against the Defendant, and appeal is taken to the United States Court of Appeals for the Seventh Circuit from said final judgment in this cause.

Maurice J. Walsh
Maurice J. Walsh
Attorney for Defendant,
Allen M. Wainer,
105 West Adams Street,
Chicago 3, Illinois

Dated: March 14, 1956.

169 United States of America)
Northern District of Illinois) SS:

* * (Caption--No. 48 C 1926) * *

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on 14th day of March, 1956, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Honorable R. Tieken, United States Attorney
450 United States Court House
Chicago 4, Illinois

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 15th day of March, 1956.

Roy H. Johnson, Clerk
BY: Gizella Butcher,
(SEAL) Deputy Clerk

170 And afterwards on, to wit, the 26th day of March, 1956 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Designation Of Record On Appeal And Statement Of Points Relied On For Reversal in words and figures following, to wit:

171 In The United States District Court

* * (Caption--No. 48 C 1926) * *

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the United States District Court
for the Northern District of Illinois,
Eastern Division:

You are hereby requested to prepare, certify and transmit to the Clerk of the United States Court of Appeals for the Seventh Circuit, with reference to

the Notice of Appeal heretofore filed by the defendant in the above entitled cause, the transcript of the record in the above entitled cause, prepared and transmitted, as required by law and the Rules of Court, and to include in said transcript of the record the following documents, or certified copies thereof, to wit:

1. Complaint filed December 28, 1948.
2. First Amendment to Complaint.
3. Answer to Complaint.
4. Second Amendment to Complaint, filed April 27, 1949.
5. Order of Court granting leave to file Second Amendment to Complaint and directing the Answer
172 on file to stand as Answer to the Complaint as Amended.
6. Mandate of the United States Court of Appeals for the Seventh Circuit filed April 30, 1954.
7. Order of August 24, 1955.
8. First Amendment to Answer filed September 16, 1955.
9. Reply to First Amendment to Answer and Exhibits attached thereto, filed September 28, 1955.
10. Transcript of evidence heard on October 13th and 14th, 1955, including opening statements of counsel.
11. All Exhibits admitted into evidence on October 13th and 14th, 1955.
12. Objections to proposed findings of facts and conclusions of law and Order thereon, November 28, 1955.
13. Findings of Facts and Conclusions of Law filed January 16, 1956.
14. Judgment Order entered January 16, 1956.
15. Notice of Appeal filed March 14, 1956.

Maurice J. Walsh
Maurice J. Walsh
Attorney for Allen M. Wainer
Defendant.

Received a copy of the foregoing Designation of Record on Appeal this 26th day of March, 1956.

R. Tieken by E. Tillotson
United States Attorney

173 In The United States District Court

* * (Caption--No. 48 C 1926) * *

STATEMENT OF POINTS RELIED ON FOR REVERSAL

1. The findings of fact and corclusions of law were contrary to the manifest weight of the evidence.

2. The judgment was contrary to the manifest weight of the evidence.

3. The judgment is not supported by substantial evidence.

4. The Court erred in its finding No. 13 that the written instruments and documents introduced by the Government were executed by its agents and by Harry Braverman.

5. The Court erred in admitting documents purporting to bear the signature of Harry Braverman without substantial proof that said documents were signed by Harry Braverman, or were executed in connection with his offer in compromise.

174 6. The Court erred in its findings Nos. 14 and 15, wherein it was found that Harry Braverman had submitted a statement of facts and financial statement, and that such documents were in evidence, when, in fact, the evidence does not show that the statement of facts referred to on Form 656-C is in evidence or was produced by the Government.

7. The Court erred in admitting and considering an abstract and statement purporting to show action by officers of the Bureau of Internal Revenue, and erred in finding that the acceptance of the offer in compromise submitted by Harry Braverman on Form 656-C was in any manner a qualified acceptance limiting the compromise of the action to Harry Braverman only.

8. The Court erred in finding that it was bound by the facts and the law to hold against the defendant and that it was without judicial authority to prevent the unlawful and inequitable release and shifting of tax liability accomplished by the entry of judgment against the defendant in this case.

9. The Court erred in failing to hold that the acceptance of the offer in compromise made by Harry Braverman and unconditionally accepted by the Commissioner of Internal Revenue effected a complete release of the action and barred this suit against the defendant and joint obligor Allen M. Wainer.

10. The Court erred in limiting the $5,000.00 compromise by Braverman to a pro tanto credit only for the defendant.

175 11. The Court erred in failing to hold that the Bureau of Internal Revenue, by the Commissioner, and by its officers and agents, failed to comply with the rules and regulations adopted by the Commissioner of Internal Revenue with reference to acceptance of offers of compromise from one of two joint assessees, and thereby failed to reserve under such rules and regulations the cause of action sued upon herein. Said rules and regulations are contained in a document entitled Com-Mimeograph, Coll. No. 4749, A.T. No. 158, dated March 25, 1938, and signed Guy T. Hevering, Commissioner.

12. The Court erred in failing to hold that the purported release of Harry Braverman only, with retension of a cause of action against his joint assessee, was an unconstitutional exercise of power by the Commissioner of Internal Revenue and his officers and agents.

13. The Court erred in failing to hold that in the alternative that Section 3761, Title 26, U.S.C.A. is held to authorize compromise from one of two joint assessees, and retension of the cause of action against the other assessee, then said statute is unconstitutional and unlawful, in that it delegates legislative authority to the Commissioner, without proper standards therefor, and is violative of due process in that it permits the inequitable and unlawful shifting of tax liability from one taxpayer to another, arbitrarily and without conformance to any standards prescribed by Congress.

Maurice J. Walsh
Maurice J. Walsh
Attorney for Allen M. Wainer
Defendant.

Received a copy of the foregoing Statement of Points relied on for Reversal this 26th day of March, 1956.

R. Tieken by E. Tillotson
United States Attorney

177 And afterwards on, to wit, the 5th day of April, 1956 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Additional Designation Of Contents Of Record On Appeal in words and figures following, to wit:

178 In The United States District Court

* * (Caption--No. 48 C 192) * *

ADDITIONAL DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

The plaintiff, the United States of America, by its attorney, R. Tieken, United States Attorney for the Northern District of Illinois, pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, hereby designates the following to be included in the record on appeal in the above-captioned case:

1. Findings of Fact and Conclusions of Law entered on December 5, 1952.

R. Tieken
R. Tieken
United States Attorney,
Attorney for Plaintiff.

179 State of Illinois)
County of Cook) SS:

PROOF OF SERVICE

Walter Sheparde, being first duly sworn on oath, doth depose and say that he is employed in the office of the United States Attorney at Chicago, Illinois; that on the 5th day of April, 1956, he placed a copy of the foregoing Additional Designation of Contents of Record on Appeal in a Government-franked envelope, addressed to:

Maurice J. Walsh, Esq.,
105 W. Adams Street,
Chicago, Illinois,

and that he placed said envelope in the mail chute located in the United States Court House, Chicago, Illinois, on said date.

Walter Sheparde

Subscribed and sworn to before
me this 5th day of April A. D. 1956.
Angela R. Berg
Notary Public
(SEAL)

180 And afterwards, to wit, on the 20th day of April, 1956, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. S. Perry, District Judge, appears the following entry, to wit:

181 In The United States District Court

* * (Caption--No. 48 C 1926) * *

On motion of the defendant by his counsel it is Ordered that the time for filing record on appeal be and the same hereby is extended to and including June 11, 1956 in accordance with Rule 73(g) of the Federal Rules of Civil Procedure

182 And afterwards, to wit, on the 7th day of June, 1956, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entry, to wit:

183 United States District Court

* * (Caption--No. 48 C 1926) * *

ORDER

This cause coming on to be heard, by agreement of the parties hereto by their respective counsel, that the original of all exhibits herein, be transmitted to the Clerk of the Court of Appeals for the Seventh Circuit,

by the Clerk of the United States District Court for the Northern District of Illinois, as part of the transcript of record in lieu of copies thereof,

It is Therefore Ordered that the Clerk of the United States District Court for the Northern District of Illinois include in the transcript of record to be transmitted to the Clerk of the Court of Appeals for the Seventh Circuit, the originals of all exhibits designated for inclusion in said record, in lieu of copies thereof.

ENTER: J. S. Perry
United States District Judge

Dated: Jun 7-1956.

184 United States of America)
Northern District of Illinois) SS:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designations filed in this Court in the cause entitled: United States of America, Plaintiff, vs. Allen M. Wainer, Defendant, No. 48 C 1926, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office, except the exhibits which are incorporated herein originally by direction of this Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 8th day of June, 1956.

Roy H. Johnson, Clerk
BY: Gizella Butcher,
Deputy Clerk

(SEAL)